

I am excited by Anna's incredible work this semester. It is truly a testament to her strength as a student that she was able to successfully manage this tutorial in her first year. It required a lot of time, dedication, and self-motivation on her part. I am confident that she will have even greater success as she builds more confidence. I look forward to working with her in the future.

Fall 2012 The Metaphysics of Gender and Race (80804) - Satisfactory

Division: Division Undeclared

Type: Independent Study Project

Session: Full Term

Instructor: Theodore Bach

Registration Status: Registered

Internal Narrative Evaluation

The content of this Internal Narrative Evaluation is a personal communication between the professor and the student. Only the student may provide this evaluation to external audiences. An Internal Narrative Evaluation is never included as a component of the official academic transcript.

Anna Rodriguez participated in the January 2013 ISP Workshop "The Metaphysics of Gender and Race". This workshop investigated whether race and gender are natural kinds, similar to the way that gold and species are natural kinds. Particular emphasis was given to the following theoretical dilemma. On the one hand, proposals that define the boundaries and membership conditions for a race or a gender (e.g., possession of certain biological properties, or possession of a personality type) typically exclude *prima facie* members of the target groups who do not possess the defining properties. On the other hand, refusing to provide a definition of gendered and racialized groups makes the political representation of such groups difficult and perhaps incoherent. Anna investigated the core concepts of this dilemma and, along with other workshop participants, sought fresh perspectives and solutions to this dilemma.

The ISP consisted of four modules. The first module addressed the general dilemma between realism and political representation for gender and race. Primary readings were articles by Linda Alcoff and Iris Young. The second module investigated the (often abused) notions of "naturalized ontology" and "social construction". Students read material from Sally Haslanger and Hillary Kornblith. Module three addressed two proposed solutions to the dilemma, and students read articles by Haslanger and Bach. Module four investigated the nature of intersectionality, and students read articles by Spellman, Shields and Davis.

In order to review, discuss, and analyze assigned material, students attended two workshops per week during January 2013. In addition, students submitted weekly blog entries to the class website (genderandrace.blogspot.com), as well as posted comments on other students' postings. Students also submitted a major critical paper that argued for an original thesis regarding the topic of the ISP.

Anna successfully completed all components of the ISP. Anna attended each workshop meeting and engaged thoughtfully and respectfully with other workshop participants. While Anna was sometimes reticent, her contributions were valuable, and I encourage her to speak up more in future seminars and workshops.

Anna was also a regular contributor to the class blog. She wrote on a variety of topics, including the role of privileged perspectives in Haslanger's and Bach's views of gender, the political dimensions of "social construction", and Iris Young's call for group-specific political policies and representation. These blog entries were thoughtful and reflected solid attempts to engage critically with complex material.

Anna also successfully completed her critical essay, titled "Historical and Situational Gender Identity". The essay was an ambitious attempt to build a notion of individual gender-identity into the group-based ontological categories of "men" and "women". While the essay did not accomplish everything that it set out to accomplish, it was on the whole a very successful essay. While the essay did not investigate some important theoretical dilemmas relevant to its thesis, it reflected a thoughtful and informed attempt to grapple with very difficult issues. Here are some more specific comments on Anna's essay. The negative thesis of Anna's essay was well-taken; extant accounts of the metaphysics of gender do not tend to theorize the notion of gender-identity in sufficient detail. However, Anna's negative thesis might be clearer with respect to its intended strength. For example, there are different reasons for why a given concept (e.g., gender-identity) might not be given central status in a theory. Perhaps the target concept is missing (or parenthetical) because it is incompatible or inconsistent with other features of the proposed account. In this case, to the extent that the excluded concept is thought to be required for theories on that subject matter, such an observation is an important argument against that account. On the other hand, perhaps the concept is missing or parenthetical, not because it is incompatible with the account, but because it was not the focus of that account. In this case, such an observation (the negative thesis) points out the need for supplementing rather than abandoning the account. Anna's paper would benefit from clarification as to which of these claims is being made.

Turning to Anna's positive thesis, Anna proposed what she termed a "situational recognition of historical

gendersâ€™. Anna made an intriguing case that the metaphysical classification of gender groups must be balanced with a notion of individual gender-identity. Anna offered a number of nice examples that showed how the exclusion of gender-identity (and individual interpretation of gender) was harmful psychologically, socially, and politically. Supporting discussions were thoughtful and reflected careful study of very complex issues. One thing for Anna to consider as she moves forward with this project is whether or not the sought-after balance is theoretically possible. At least, Anna should explain that it is. A metaphor might be helpful here: Anna has succeeded in indicating a particular itch and how nice it would be to scratch that itch, but as other theorists have made clear, it may not be so easy to scratch this itch and not at the same time create many additional painful itches. There is a tension between establishing an ontology for gender and race groups for the purposes of group political representation, on the one hand, and preserving the individual differences and variations that Anna theorizes as valuable, on the other.

In sum, Anna turned in an excellent effort in the ISP â€œThe Metaphysics of Gender and Raceâ€, and she did a great job developing and improving her grasp of the target concepts throughout the ISP. Her performance was indeed satisfactory.

Fall 2012 Reading Poetry* (80123) - Satisfactory

Division: Humanities

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Robert Zamsky

Registration Status: Registered

Internal Narrative Evaluation

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This class is an introduction to the study of poetic language. We read lyric poems from a wide range of historical periods, cultural contexts, and aesthetic commitments, with a consistent eye toward the ways in which language is used as the material of poetry â€” in much the same way that pigment is the material of painting or sound and silence are the materials of music. Students in the class learn to attend to sound, syntax, lineation, and the other elements of prosody, and to consider the project of poetry from a number of perspectives: as arrangements of utterance, as pleasure, as the construction of a self (whether abstracted or socially situated), as the process of working out or (more likely) posing emotional, philosophical, political, and other dilemmas. The concept of the class can be usefully captured in the phrase, â€œpoetry as experience.â€ Our goal is to explore as many facets of that experience in as much detail as is possible.

We concluded the class by reading two recent collections by major American writers: *Versed*, by Rae Armantrout, which won the 2010 Pulitzer Prize and the National Book Critics Circle Award, and was also a finalist for the National Book Award; and *The Presentable Art of Reading Absence*, by Jay Wright. Armantrout and Wright are two of the most significant poets working today, and they represent starkly different poetic styles and preoccupations.

Writing in the course included informal reading responses, two formal explications, and a final paper, in which students were asked to deploy the practices of close reading as the basis for a longer treatment of the collections by either Armantrout or Wright.

Evaluation

Attendance and ParticipationAnna's attendance was satisfactory, but her participation was slim. I would strongly encourage her to more actively contribute to class discussion.

Reading ResponsesAnna's informal reading responses effectively demonstrated her gaining familiarity with course concepts and terminology.

Explication 1Anna's first explication was a treatment of John Ashbery's poem, "Paradoxes and Oxymorons." The paper was very well done. My summary evaluation of it read:"Well done, Anna. The paper is a very good reading of Ashbery's poem â€” no easy task. You do well to attend to the complications of the poem, and to consider how they develop over the course of the poem. I'm not sure why you decided to capitalize some nouns â€” Poem, Play, Don't. That's a small quibble, though. On the whole, the paper is quite well done."

Explication 2Anna's second explication was also very well done. My summary evaluation read:"The paper is essentially a good treatment of Yeats's poem, particularly for the ways in which you focus on how his imagery complicates what might be the expected themes in the poem. I would, however, like to see you attend more carefully to how he builds the poem â€” the clearest example is the repeated image of the birds. What do they have to do with each other? There are other examples of similar gestures on his part. As you look toward your final paper, please be sure to focus your energies more on the questions about how the poem is made."

Final PaperFor her final paper, Anna tackled Wright's book-length poem, *The Presentable Art of Reading Absence*. This is no small feat, partly because of the poem's sheer length (over 80 pages), and partly due to its intensely introspective and contemplative mode. Anna does very well, then, to get into the mechanisms of this poem, including the prevalent images of the body, the use of West African mythological systems, and the construction of voice(s). The reading is attentive and insightful -- Anna truly developed aspects of Wright's writing that extend well beyond anything covered by the class. The paper is attentive, insightful, and effectively written. An exemplary conclusion to her work in the course.

SummaryAnna's work in the class was clearly satisfactory. Her written work was exceptional, and I only wish she had more often shared her insights with the class as a whole.

Fall 2012 Sociology of Gender and the Body (80166) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Emily Fairchild

Registration Status: Registered

Internal Narrative Evaluation

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Sociology of Gender and the Body is an introductory-level topics course that addresses general sociological concepts as we focus on the intersection between gender and the body. We cover a wide range of topics, including: media representations of gendered bodies, body image, cosmetic surgery, menstruation, reproduction, sexuality, sports, and how the body can be used to challenge gender, among others.

In addition to regular attendance and participation, course requirements include: Three 2-3 page reflection papersOne 5-6 page film analysisThree in-class exams (approximately 20 multiple choice items and 8 short essays)

Participation

Though Anna attended class regularly, she was rather quiet. She seemed more engaged in small group discussions than with the whole class.

Exams

Exam 1: 93.5% (Class Ave 81%)Exam 2: 79% (Class Ave 86%)Exam 3: 92.5% (Class Ave 83%)

Anna's exams began with a perfect score on the multiple-choice items. The essays needed more explanation on each of the first two exams, and the second indicated confusion about the Steinem, Kippax and Smith, and Bordo readings. While this score was quite a bit lower than the others, it was still satisfactory. She recovered quite well on the final, which showed significant improvement in her essay explanations. Nice job.

Writing assignments

Anna's first reflection paper did a fine job exploring appearance practices as related to gender expectations. Her second paper addressed the Amherst rape case; this one was relatively thin, mostly repeating the material on sexual assault that we discussed in class. Her final reflection was a very nice analysis of a ban on crossdressing that showed understanding of sex and gender as well as victim blaming. Strong finish.

Anna's film paper reviewed */Education/* as exemplary of our course concepts. She did a nice job weaving in the themes and references to readings. Well done.

Overall

It seemed Anna's work took a bit of a dip mid-term, as her second exam and second reflection paper were weaker than the rest of her work. In all, though, her performance was clearly satisfactory. I'd like to hear her speak up more in class.

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Crime and Punishment - The American Criminal "Justice" System and American Society	Alicia Windsor Wieloch		4	
Urban Sociology	David Brain		4	
Landscapes: Past and Present	Uzi Baram		4	
Topics in Feminist Philosophy	Aron Edidin		4	

Spring 2013 Topics in Feminist Philosophy (20172) - Satisfactory

Division: Humanities

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Aron Edidin

Registration Status: Registered

Internal Narrative Evaluation

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This course covered selected topics in recent feminist philosophy. It was organized around three ideals, Reason, Autonomy, and Justice, which have been developed in traditional philosophy as universal human ideals but whose traditional development has been criticized as being distorted by entanglement with ideals of masculinity. In each case, feminist reconsideration of the ideal has led to a rich and wide-ranging philosophical literature. The course also included consideration of issues facing women in academic philosophy. The last two weeks of the semester were devoted to issues and readings chosen by the class.

Written work for the course consisted of three discussion questions submitted each day on that day's reading, five two- to four-page response/reaction papers, two "perfect paragraphs" evaluated both for content and writing, and a long final paper or three-part final assignment (comprising a short paper developing the author's view of a philosophical topic, a second paper defending a contrasting view of the same topic, and a final all-things-considered discussion of the topic chosen).

Attendance, participation, and discussion questions: You missed four class meetings, more than ideal. You were not a consistently active contributor to class discussions, but you made some valuable contributions and participated more actively in small group discussions. You submitted only 13 of 24 sets of discussions questions. That's a shame, partly because those you did submit showed careful and thoughtful reading and identified important issues.

Response papers: You submitted all five response papers. You used the format effectively to develop cogent lines of reasoning in response to important points in the readings.

Perfect paragraphs: You submitted both perfect paragraphs. They were generally well structured but in each case I asked for revisions that I never received.

Final project: You end up concluding that the ideal objective of feminist knowledge-creation is a situation in which individuals consider themselves to be the primary epistemic agents, but in a way that acknowledges their social embeddedness and takes advantage of possibilities for productive dialogue. You suggest, though, that the present situation might call for a more group-focused approach. In getting to this conclusion, you reason cogently about individual and group elements in inquiry, and make progress across the three parts of the project. The project would be strengthened by more effective dialogue with authors we read, especially perhaps with Bubeck and Frye. (You wrote the paper after leaving town. Did you have access to the books?)

You did some strong philosophical work in this course. Your lapses in submitting discussion questions and perfect paragraph revisions suggest that consistent engagement may have been an issue.

Spring 2013 Landscapes: Past and Present (20143) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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The course examined landscapes past and present. The sustained focus on materiality makes this thematic Anthropology course a class in archaeology. Since Anthropology seeks a holistic perspective on its subject of study, landscape encourages/facilitates/requires greater inclusion for consideration of peoples, places, and cultures by going beyond a site to approach vistas. Over the semester, the seminar-style course examined the intellectual background for landscape archaeology, examples of successful projects employing the approach, and exploration of landscapes from across the planet, including nearby places through presentations by the professor, three books (Matthew Johnson 2007 *The Idea of Landscape*, David/Thomas, editors, 2008 *Handbook of Landscape Archaeology*, and Health/Gary 2012 *Jefferson's Poplar Forest: Unearthing a Virginia Plantation*), and twenty-three articles/chapters. The energetic class members explored the concepts of place, land, nature, and 'scape and employ them for two case studies. For a satisfactory evaluation: attendance and participation, two short papers (one at the start of the semester on the Johnson volume and the other at the course conclusion on the nature of landscape archaeology) and two case studies (the first on the contemporary landscape in Sarasota and the second on reconstructing a past landscape from the archaeological record).

Anna entered the course without the background of the majority of her classmates. I was concerned about enrolling her but she was enthusiastic and demonstrated she could productively contribute to seminar-style discussions. She attended regularly, having just one excused absence over the term. The satisfactory designation indicates satisfactory completion of all assignments.

For the first assignment, Anna started the semester well. Her paper contained several very good points, including a well-organized critique of Romanticism and an explanation of the need for the sacred in North American landscapes. Implicit in the essay was a feminist and multivocal approach to the study of landscapes; making that approach explicit would fit the anthropology requested by Johnson and fit the goals of the course nicely.

For the second assignment focused on a contemporary landscape, Anna was creative, creating a 13-minute video. The video seemed more focused on the SRQ airport as a place than landscape; the interviews gave social texture to the place (clearly the coffee of Dunkin Doughnuts is significant for NCF students) and the sense of the place as a tiny city was shown clearly. The elements can fit course concerns but would have required some innovations to interpret the stores, pathways, and waterfall as well as the fish tank and manatee statue in terms of landscape archaeology. As a built environment dedicated to mobility, the course concerns with fluidity of landscapes were an entry point for Cronin's checklist on how to study landscapes. The Behind the Scenes section, especially with the spent bullets found on the grounds after holiday celebrations, was the point where the video brought out concealed landscapes, different perspectives on the place, and multivocality. The flatness of the exterior aspects of the airport deserved attention "it seems to be the major feature of the landscape. I was pleasantly surprisingly to see how much access Anna received for this project "I guess it never hurts to ask is the major lesson of the endeavor. The video was a creative expression while sustaining the documentation of the place; I was impressed with the product and appreciate all the effort that created the insights.

For the second assignment, the focus went to a past landscape. Reading archaeological scholarship, particularly on a complex, well-excavated site like La Isabela, is challenging and the paper reflects synthesizing the archaeological and historical materials for Columbus's town. There were hints of the landscape in both the paper and the class presentation but the representation of the landscape focused on buildings without synthesizing them into a landscape perspective. Great work and enthusiasm for the place and for Deagan's important insights; just needed more of the course materials to guide this information toward reconstructing beyond the buildings.

The positive efforts toward understanding place and landscape were capped off in the final paper assessing landscape archaeology. The paper captured the recursive aspects of landscape studies in archaeology, explored the concept of landscape, and expanded on the two case studies. As a first step in anthropology, Anna focused on the social aspects of landscape when the course delved deeper into multivocality and social dynamics but the consideration of "ways of seeing" and the attempts to work with taphonomy (Johnson and Dawdy could have sharpened the presentation of that key concept) were very good and demonstrated a keen sense of the course's contours.

Overall, Anna challenged herself by taking this course; she kept up with class discussions and produced satisfactory papers that employed video production and included complex archaeological materials. I am glad I decided to let her into the course and look forward to seeing her in future classes or tutorials.

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Independent Study Project: Internship Rosemary Birthing Home	Uzi Baram	4
Introduction to Cultural Anthropology	Maria Vesperi	4
People and Cultures of the Middle East	Uzi Baram	4
Archeology of Florida	Uzi Baram	4
Tutorial: Heritage Interpretation Practicum	Uzi Baram	2
Intermediate French I	Amy Reid	4

Fall 2013 Heritage Interpretation Practicum (80263) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term - Mod Credit Equival

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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Interpretation is "an educational activity which aims to reveal meanings and relationships through the use of original objects, by firsthand experience, and illustrative media, rather than to simply communicate factual information." Freeman Tilden

The practicum had a central goal: training for a public outreach event on October 19th at Reflections of Manatee property that includes the Manatee Mineral Spring. The tutorial focuses on training in heritage interpretation, including a session by Sherry Svekis and a special guest visit by Karen Fraley of Around the Bend Ecotours, and employing the National Park Service training materials in heritage interpretation. The tutorial met weekly to go over the training materials, discuss the history around the Manatee Mineral Spring (from the pre-Columbian era to the 20th century), make sense of NPS guidelines, and practice presentations. The result was an engaging program in east Bradenton that received positive attention from visitors and the historic interpretation community members. After the event, students wrote a self-reflective essay on the experience and heritage interpretation. Then the group researched careers in heritage interpretation, organizing information from graduate programs and employment opportunity, creating a useful document with tips on moving forward in heritage.

Since the practicum was a collective endeavor, the positive assessment covers all nine members of the tutorial, in fact the project needed to have that teamwork and I appreciate the good humor, positive community spirit, and productive results from the tutorial. While the public engagement was challenging, and the history presented was complicated, the group conveyed the key facets well.

In her self-reflective essay, Anna recognized the goal was to "connect people to history in order to foster a sense of stewardship over heritage and its physical remnants. As docents for Manatee Mineral Springs, we had the privilege of conveying our perception of local history. In reading the Inspiring Guide, I focused on "provoking" and "inspiring" visitors to engage with the site. While I tried to tailor my message to my audience, I made sure not to shy away from controversial topics." Anna clearly captured the dynamics and dimensions of heritage interpretation with this practicum.

I appreciated that the post-colonial anthropology of the endeavor came across in her essay: "Talking to people from the community about what they knew about the site allowed me to see current perceptions of the site and connect those views to history. Listening to what people cared about allowed me to talk about themes throughout the history that they could more easily connect to." While seemingly obvious, anthropology does not naturally move toward listening carefully to people so I am glad that Anna captured that component of the NCPAL-based program. Furthermore her interaction with a couple with no interest and the positive engagement with James Bullock, who portrayed the great maroon leader Abraham, brought out the realistic range for any public engagement - engaging with the public means being prepared for anything from disinterest to a highly informed visitor.

Anna delved deeply into the history of the region and demonstrated great skills in both heritage interpretation and anthropological insights into heritage with this experiential learning project. She can add heritage interpretation to her list of skill sets in Anthropology.

Fall 2013 INTERNSHIP Rosemary Birthing Home (80908) - Satisfactory

Division: Division Undeclared

Type: Independent Study Project

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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For the internship, Anna engaged in several different activities for the Rosemary Birthing Home (in the order described in a self-reflective essay): 1. media intern for Maternally Yours 2. attending childbirth classes 3. administrative help 4. attending community events including a fund raiser

These activities provided a wide-ranging view of a small but engaged birthing center. The essay expresses the positive experiences and great contacts made by Anna over January. I would like to see an assessment by the Rosemary Birthing Home, both for their perspective and for a record of Anna's good work.

The one concern came at the conclusion of the essay when Anna stated she felt she was overstepping boundaries as a researcher. The internship was a great experience and promises to be a location for ethnographic studies but there is an ethical line between being an intern and being a researcher. Nothing in the essay raises concerns since no data on any one is presented but before moving forward with any research on these important issues, Anna should complete the CITI exam and complete an IRB application - the essay indicates this location could be promising and future engagement should be come with IRB approval.

I have some minor comments on the eleven-page paper, for discussion with Anna. On February 4th, I wrote for the ISP: clearly satisfactory.

On February 18th, I received, as an email, a very positive assessment of the Anna's work as an intern (posted here as a record of the activities):

I am writing on behalf of Laura Gilkey, Dana King, and myself, as producers, writers and hosts of the weekly radio program Maternally Yours: a Conversation about Pregnancy, Childbirth and Parenting. Our program airs live on Tuesday nights from 6-7pm on WSLR 96.5, Sarasota's Community Radio Station, is available online and via podcast throughout the world, and is re-aired on several Pacifica Radio stations across the country. This email is to provide you with an overview of the internship your New College of Florida student Anna Rodriguez is participating in this semester.

Maternally Yours focuses on issues affecting pregnant women and families with young children from a journalistic, consumer perspective. The program is hosted on a rotating basis by three mothers who share a desire to empower women to take control of their bodies, pregnancies, births, and the raising of their children; we believe the best way to do so is with evidence, information, and support. Women who are educated and supported in their effort to have positive, healthy birth experiences feel empowered and in control. Empowered women create empowered families. Empowered families create healthy societies. Since joining the Maternally Yours team in the Fall (under sponsorship of Dr. Fairchild), Anna has been an integral part of our weekly process. With just a week to produce each episode, our tasks include planning and scheduling topics, securing guests, writing an HTML newsletter, posting to our blog and to the WSLR parent website, social media marketing, developing questions, writing an episode outline, collecting PSA's and birth announcements from the community, editing any pre-recorded audio, hosting the episode, writing and posting an epilogue, and recording and editing the episode for podcasting on two different podcasting platforms.

Anna was brought on as our Audio and Visual Specialist. In that capacity, she serves as our "technical liaison", editing our weekly podcasts and uploading them to two separate podcasting platforms. Knowing that we were interested in producing a short promotional video to highlight the mission of Maternally Yours, Anna took the initiative and began filming over the January ISP. We are hopeful that in addition to honing her audio and video production skills, Anna will continue to gain insight into maternal health and mothering issues via her participation in this internship.

In summary, Anna performed the following duties for Maternally Yours during her internship last semester and through the ISP: attended general training meetings with all interns and hosts, attended 2 task specific training meetings to learn the podcasting procedure, prepared "draft" podcasts as a training exercise, edited approximately over a dozen episodes for two different podcasting platforms, maintained the podcast files in Dropbox, and attended regular Collective meetings and special community events related to our mission. These tasks were in addition to the specific requirements Anna negotiated with Dr. Fairchild. We are thrilled that Anna is continuing her internship this semester and are open to any questions you may have about her participation.

Gratefully and Maternally Yours,Ryan, Laura, and DanaProducers and HostsMaternally YoursWSLR 96.5 LPFM | Sarasota, FL

Fall 2013 Introduction to Cultural Anthropology* (80074) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Maria Vesperi

Registration Status: Registered

Internal Narrative Evaluation

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This course provided a cross-cultural approach to core issues in the contemporary world. Topics included anthropological approaches to social structure, social stratification, language, non-verbal communication, religion and concepts of self in both Western and non-Western societies. Class discussion focused also on the philosophic foundations of the anthropological paradigm, the impact of anthropological ideas on learning theory as it originated in the late 18th and early 19th centuries, and globalization and culture change in Botswana, India, Mexico and Nepal. Finally, students were encouraged to evaluate the potential of the anthropological perspective for illuminating contemporary problems and issues. The course was organized as a series of lectures followed by class discussion. Requirements included regular attendance and participation, several focused response papers, three 4-6 page essays and a more comprehensive final essay. Students were evaluated on the basis of written work and contributions to class discussion.

Anna's class attendance was good and she appeared to be well prepared. She was not among the most active discussants in this large class but she participated regularly as the semester progressed and her comments reflected strong comprehension of the material and a good ability to synthesize concepts from one reading to the next. Anna's response papers and essays were submitted promptly and fully satisfactory overall. I will comment on a selection of her writing here:

"Cultural Differences in Mothering," Anna's first paper, was a good initial effort with the material of this course. She provided a nice choice of examples and framed them in structural context very nicely. I advised her to be careful of overly broad generalizations, as each culture is quite different. Also, one of the readings she selected was heavy on opinion and short on sources. Overall, this was strong, thoughtful work.

Anna's second essay, "Racial versus Ethnic Differences in a Globalizing World," reflected a very good choice of topic with relevant and nicely developed examples. I would have liked to see the topic expanded a bit more, though. I think Anna should have considered the implications further before deciding that "ethnicity" is a good substitute for "race." The topic is complex, and while "race" is a cultural construct that has well-established problems and should not be used, the underlying structural issues that cause people to harm each other based on perceived difference must be addressed before real change can take place. Anna is aware of this, I know; these were just suggestions for exploring the issues more fully in her thoughtful paper.

Anna ended the course on a strong note with her final essay, "Exploring Applied Anthropology in Mountains Beyond Mountains." Using Kidder's book about Paul Farmer as a focus, she employed Alverson, Rarrett and McCurdy to present a critical perspective on aid, development and advocacy, with an eye toward understanding how efforts can be reframed to take better account of local cultural values and the agency of individuals and recipient communities.

Overall and in the details, a solidly satisfactory performance in this course and strong progress toward developing a well-rounded background in anthropology. I enjoyed working with Anna and I look forward to seeing her again, hopefully in a smaller seminar.

Fall 2013 Peoples and Cultures of the Middle East* (80071) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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The Middle East is a discourse and a location, a place of history and pressing contemporary concerns. This thematic cultural anthropology course offers a view on the region, its peoples and cultures, through ethnographies and complementary materials. The course was built around four ethnographies: Lila Abu-Lughod 2000 *Veiled Sentiments: Honor and Poetry in a Bedouin Society*, Celia Rothenberg 2004 *Spirits of Palestine: Gender, Society, and the Stories of the Jinn*, Rebecca Bryant 2010 *The Past in Pieces: Belonging in the New Cyprus*, L. L. Wynn 2007 *Pyramids and Nightclubs: A Travel Ethnography of Arab and Western Imaginations of Egypt, from King Tut and a Colony of Atlantis to Rumors of Sex Orgies, Urban Legends about a Marauding Prince, and Blonde Belly Dancers*. As the subtitles suggest, gender was a central concern as was social geography, ethnicity and nationalism, and representations in light of the critique of Orientalism. In addition, a 2013 edited volume *Understanding the Contemporary Middle East* offered background on a range of issues and thirty-two articles/book chapters (some supplemental readings) provided competing insights into the Middle East. For a satisfactory evaluation, students attended class regularly, participated in discussions, contributed a group presentation on either cities or religions, completed three written assignments on the ethnographies and produced a final paper addressing the significance for anthropology for understanding the region. We discussed the presentations and students received detailed commentary on the written assignments so the below focuses on attendance/participation and summarizes the written work for the course.

Anna never missed class session, according to my records. From volunteering to read jinn story to addressing comments by other students to bring them into line with course concerns, Anna was a productive member of the course. I appreciated her questions and comments throughout the semester.

For this semester, I tried a new approach to the ethnographies. Anna was one of the students who ensured it was a successful experiment. For the first assignment, Anna's paper, titled *Ghinnawas as Sentimental Performance within Bedouin Society*, included a useful discussion the need for privacy among the *Awlad 'Ali*. Ethnographers use filming as part of the toolkit of the discipline but these Bedouin would not have wanted to be recorded in that manner, as Abu-Lughod makes clear. The well-written essay employed the ethnography's concepts for honor and shame well to direct the reader toward the limitations for representations. The use of a poem to illustrate the point was inspired. The reasons for including such performances were explained well, demonstrating Anna's continuing efforts to use new media to reach anthropology's goals. As such the paper sets the agenda for the next two assignments and hints at the discussion for the final paper. Excellent written work to start the semester.

For the second assignment, Anna demonstrated she has thought through the concerns for diversity, variation, and especially gender to move past Orientalism. There was an excellent use of *Spirits of Palestine* in the paper; the suggestion for a film on the jinn world illuminated the dynamics described by Rothenberg. The discussion was fully anthropological, bringing out the goals of ethnography and employing details from the participant-observation and nuances from Rothenberg's analysis. Again: excellent work.

For the third ethnography to go digital, the expectations were heightened for a productive approach to represent the ethnographic information. Rather than recapitulating the argument in the ethnography, Anna's essay concisely presented the goal of the work - to describe, in emotive and intimate terms - the ongoing struggles on Cyprus. The presentation opened the avenue for the suggestion to focus a digital representation on materiality. Recognizing the theme that connects soil, buildings, and place as landscapes, the suggestion calls for Greek and Turkish perceptions of houses and material culture. For this assignment, the paper engaged the challenges faced on Cyprus as landscapes, memories, and betrayals continue to haunt reconciliation.

The final paper, with the wonderful title "*Disassembling the Facade: Going Beyond Pyramids and Mysticism*," offered a powerful critique of Orientalism. The essay moved from *Pyramids and Nightclub* to the larger issues facing understanding the contemporary Middle East. The essay is an impressive example of conceptualizing anthropological concerns over landscapes and history, people and representations. The silencing of diversity and of the contemporary is expressed very well, passionate without being polemical (a challenge when writing about the region). Pulling out important theoretical contributions from Wynn, a task she makes difficult because of her jargon-free prose, provided a framework for an explanatory Anthropology. I stressed throughout the semester that anthropologists interested in people should be interested in what people are doing: the essay highlighted new social media, rumors, and other current expressions of identity toward productive ends. The result is a paper that fully meets the goals of the course but also starts a conversation on social identity, representations, and new opportunities for Anthropology.

Throughout the semester, and capped off with the final paper, Anna offered robust considerations of cultural anthropology, the dynamics for the peoples of the Middle East, and interesting insights and opportunities for non-Orientalist representations. I appreciate her positive contributions and foresee the productive potential of these strands for future research in Anthropology.

Fall 2013 Archaeology of Florida (80085) - Satisfactory
Division: Social Sciences
Type: Course/Seminar/Topics
Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

The content of this Internal Narrative Evaluation is a personal communication between the professor and the student. Only the student may provide this evaluation to external audiences. An Internal Narrative Evaluation is never included as a component of the official academic transcript.

In 1513, Ponce de Leone named the land he saw as Pascua de Florida. To commemorate the Quincentenary, this new course offering focused on the archaeology of Florida gleaned from archaeological investigations, European sources, and oral traditions to explore the chronology starting with the earliest inhabitants (including the PaleoIndian, Archaic, and regional traditions) to the European invasion and colonial eras (with special attention to those who resisted) and then to incorporation into the United States and into the 20th century. With no recent text on Florida Archaeology, the course used three books: Elsbeth K. Gordon 2013 Heart and Soul of Florida: Sacred Sites and Historic Architecture, John Hann 2003 Indians of Central and South Florida, 1513-1763, and Kathleen Deagan and Darcie A. MacMahon 1995 Fort Mose: Colonial America's Black Fortress of Freedom along with twenty-seven scholarly articles and book chapters and several websites and online videos. The multimedia resources made the point about contemporary anthropology's accelerating use of new media for representations of the past and present.

The professor could not have conjured up a better group for the course. While active participation in class discussions reflected the range of personalities, the level of engagement with the topics, readings, and concerns was consistently high throughout the semester. And with this upper-level course, two new (for the professor) assignments required the students' trust. The results were quite positive. We covered the major archaeologists of Florida, the key sites, and the major epochs, with particular attention to historical preservation in light of development and rising sea levels. This evaluation delineates attendance and participation as well as providing brief comments on the two course assignments to illuminate the satisfactory designation for the class.

Anna is one of the students who made the creative assignments meaningful. She attended class regularly, with two absences. Her approach to Anthropology is refreshing and engaging, making her work in the class very positive even if there are critiques needed for some elements. This semester, we tried something different for a project on the earliest peoples of Florida. Using a web-based comic generator or their own artistic abilities, students were asked to make a comic for either the peoples of a specific site or the excavation of a specific site. Comics are defined in terms of juxtaposed pictorial and other image images in a deliberate sequence, intended to convey information; sequential art and graphic presentation are other terms used for this genre. Thanks to the good-spirits of the class, the experiment worked but Anna might have pushed the envelope a bit too far with her representations of the McKeithen site. While I have a sense of humor, some of the statements in the comic are off-putting and the set up for imagining life at McKeithen extended over five panels when more on the site was needed. Reconstructing life at the site is the goal of the assignment and general aspects of the finds are presented well, more specifics would have been useful. The twelve panels generated from www.bitstrips.com have a public expression of archaeology goal; the insights into the three mound complex at McKeithen and the changes in the 5th century CE deserve attention, specifically the rise of social differentiation, the burning at the mound tops, and the covering of Mound C with six feet of earth.

The final project was also new: a grant proposal for a site from the second half of the semester. The assignment's guidelines were a simplified version from the state Historical Preservation Grants; students were required to present their ideas in front of the class but Anna missed the class session; she did present her effort to me during office hours to make up for that component of the project. The presentation illustrated Anna's strengths; I only wished we had the peer review.

The written product for the assignment had several components: a title, abstract, discussion, plan, budget, and bibliography, each evaluated in turn. The title is informative but could have used some more precision: "Kingsley Plantation: Exploring a Multicultural Household within Slavery;" for example: Interpreting Kingsley Plantation: Exploring a Multicultural Household during the Era of Slavery." The abstract explains the project concisely. The key to the assignment is the project description and the discussion covers the complexities of Zephaniah and Anna Kingsley well, describes the park, and highlights the archaeological investigations and annual heritage celebrations. But still, as the abstract pointed out, many do not know of this interesting place and the project aims to make the location more engaging. The project is wide-ranging, with a virtual walking tour, electronic excavations, and interactive components to allow visitors to geo-tag their digital photographs; a children's section, with a scavenger hunt, was a nice touch. The representation is not meant just to place materials on the internet; the proposal lays out a shared heritage concept, with a means to connect people to the site and to sustain the preservation. Underlying the discussion is a sense of the history as important for heritage and social justice; the bibliography had a few useful resources but needed to include more of course materials to help propel the ideas presented for this very good project. The project description concludes with a call, following Weisman, to situate Florida within a global, inclusive context – connecting to a central course theme. The assignment includes timeline and budget, which are challenging components, but Anna offered reasonable numbers.

Overall, Anna's work in this course was engaged and interesting. She demonstrated her creativity and concluded with an

anthropological project that fit the course well. Anna illustrated a keen ability to integrate multiple levels of representations and connect them to important social goals.

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
East African Anthropology	Erin Dean		4	
Intermediate French II	Amy Reid		4	
Race and Ethnicity in a Global Perspective	Uzi Baram		4	
Tutorial: Internship Maternally Yours/Rosemary Birthing Center	Uzi Baram		4	
Praise of Copying	Melanie Hubbard		4	

Spring 2014 Race and Ethnicity in Global Perspective (20080) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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Race and Ethnicity in Global Perspective focuses on the organization and classification of human difference and social identities. The course examines race and ethnicity as significant approaches for understanding and managing human biological and social variation, including a critical consideration of the role of Anthropology in the ontology of the Race Concept. The main goal of the course is a comparative, historical perspective on human differences, with particular attention given to the Race Concept as it developed in North America and spread around the world; the larger goal is to understand the social phenomena of difference in the world today.

This semester, the course explored the development of the Race Concept in the USA, apartheid and its legacy in South Africa, theories on ethnicity and nationalism, the divides between Israelis and Palestinians, the interactions of the state and minorities in China, an ethnographic view on the reconstruction of Sarajevo after the Yugoslav wars, the continuing divides on Cyprus, and concluded with a view on the processes analyzed as ethnicity incorporated and offered cosmopolitan solutions, as generated in anthropology for the social classifications. Students were required to attend class regularly, participate in class discussions and presentations, engage three books (Audrey Smedley and Brian Smedley 2011 Race in North America, Fran Markowitz 2010 ethnography on Sarajevo, and Raymond Scupin's edited volume 2012 Race and Ethnicity: the United States and the World,) along with thirty-nine articles/chapters, and produce a satisfactory term project. Students chose a case study to explore course concerns through a five-step process (choosing a topic assignment, a paper on the Race worldview and history, another on nationalism and ethnic relations, a class presentation on their research, and a final paper) since students received detailed evaluations on each step along the process, below only highlights the steps in order to focus on the final paper.

Anna attended regularly, although a workshop at the UN contributed to three excused class sessions. Anna participated in discussions, raising important points and ensuring clarity on the central anthropological concerns for the course. She was a pleasure to have in the classroom, making the course better for everyone.

The step-by-step process worked very well for the course project. For each step, Anna provided important information on the Dominican Republic and the theoretical concerns for the course. The class presentation illustrated the successful process, with the peer review noting the productively intense and professionally appropriate reflexive stance taken by Anna. Some students noticed the hm and other fillers but they were minor distractions. The presentation was excellent, conveying the personal without being overwhelmed by it.

The final product for the semester brought together all the productive elements and integrated suggestions that made for a successful, interesting, and engaging research paper. Similar to the class presentation, the reflexivity set the appropriate tone for the paper: passionate, analytical, and personal yet self-aware – all important elements for a scholarly investigation of Race. The course built on Smedley and Anderson to frame the analysis of Race and Ethnicity, and Anna's paper

employed the insights well to recognize the dynamics for anti-Haitian prejudice in the Dominican Republic. The paper concluded with a call for teaching the children a vision of difference, implicitly following Montague. The paper put forward the elements that teaches difference as Race, from the national holiday to massacres on the border; the details on history, politics, and particularly the formulations by the Balaguer illuminate the process that entrenches a Race worldview. The trajectory, sadly (and that comes across in the writing, another challenge met by Anna), reached the present-day with the 2013 constitutional amendment that the international community has labeled apartheid, the removal of all peoples of Haitian-descendant even whose ancestors came in the early 20th century.

Anna produced a courageous paper for this course, refusing to excuse policies but sustaining the cultural relativism of Anthropology to understand in order to encourage positive change rather than judge. Race is exposed and an avenue opened toward social justice on the island of Hispaniola. The spirit of WEB DuBois animates the argument - a remarkable scholarly triumph. The paper should have cited DuBois along with Montague, and Barth (the boundary/interaction approach is employed in the argument) since their influence is clear and figuring out who and how to cite is an area for growth. But the key assessment of this work: Anna met the goals for the course and set the stage for continuing efforts in a critical anthropology that confronts the dilemma of differences in our contemporary world. I look forward to seeing her expand the framework and employ the insights for future academic/scholarly endeavors.

Spring 2014 In Praise of Copying (20154) - Satisfactory

Division: Humanities

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Melanie Hubbard

Registration Status: Registered

Internal Narrative Evaluation

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This course is about manipulated text, words as material, to be copied, plagiarized, sampled, repeated, cut-up, run through algorithms, taped and transcribed, split into phonemes, erased and redacted, run through search engines, alphabetized. This is poetry 'against expression,' unconcerned with the ego's unity or epiphanies; this work is concerned with how language speaks us, or doesn't—and with what shapes our reading practices. Readings included Gysin, Burroughs, Acker, Cage, Ted Berrigan Sonnets, Sandy Florian Tree of No, C.D. Wright One Big Self, Susan Howe Eikon Basilike, M. NourbeSe Philip Zong!, Tom Phillips A Humument, Ronald Johnson Radi Os, Travis Macdonald O Mission Repo, Beard of Bees, Holmes, Ruefle, Bervin, Magee, Mesmer, Mohammad, Degentesh, the conceptual writing anthology Against Expression, and other materials including secondary sources such as Marcus Boon and Mark Rose, articles, online sites, and sound files. As a bonus, Travis Macdonald was able to give a reading, provide an erasure workshop, and sit in on our class discussion. Much attention was paid to the construction of the 'author' as a figment of copyright, to 'originality' as a fictitious metaphysical guarantor of value, to reading as a socially constructed practice and set of expectations, and to conceptualism's own possible complicity with undemocratic power in a late capitalist society. This course featured six Activity Days. Each student could elect to generate some 'uncreative' writing in response to the readings for the unit, choose to hunt down and present further primary materials, or choose to find secondary critical sources and present one's findings. A three-page analytical essay was due on each Activity Day, and four student Presentations of their work for the Day provoked class discussion; each student did two presentations and six papers, in addition to any 'uncreative' writing experiments undertaken as further investigations of our material. The class was run as a large seminar; often we broke into small groups to analyze the readings before launching a larger discussion; participation was essential.

Anna did good work for this course and was an active and regular participant in class discussions. It was clear that she cared about the ideas and modes addressed in the course material, and she was willing to stick her neck out to disagree with others or propose another point of view. Her speech in class was often collaborative, and she worked diligently in small groups; even when it seemed that they were going off on a tangent (such as pursuing the Warhol video), they were actually working the vein in a different and productive way. Anna's presentations were entertaining and thought-provoking in equal measure, helping the class to clarify our thinking together. Anna's uncreative writing marked her sincere engagement with the material, and her essays developed somewhat as clear linear analyses of complex ideas. Anna was engaged by social and political issues raised in the course of our work and probably proved to herself that appropriative, conceptual writing need not be nihilistic or disengaged, but can be a powerful set of tools for analysis and critique. But it was also clear that the wide range of formal strategies in this writing were of interest to her. Anna was a pleasure to have in class, and I hope she will do more work in literature. Individual paper evaluations follow. One. Kerry Blames Syrian Government. A cut-up of newspaper by tracking column rows, then rearranging after the pattern of Berrigan's Sonnet 15. The essay argues that the cut-up achieves a 'semi-coherent reiteration of political jargon,' but might there be a critique of the process of politics itself? or of newspaper information codified for public consumption? The essay uses/refers to the New York School's devaluation of personal authorship (I would strongly disagree that this is the case) and valuation of process. Two. Voices from Haiti. This essay presents Kwame Dawes' "Voices from Haiti" a documentary poem accompanying film/photos on the Pulitzer Center

website, describing it in detail. There are opportunities missed, however, or not fully taken up, to think about documentary poetry in general, the issues it raises about representation, authenticity, and power (author-subject); the paper would benefit tremendously by considering this work in the light of books and issues we've discussed. Is this work as self-conscious as *One Big Self* or *Zong!*? Your papers should develop an analysis in addition to providing a description. But this is a good discovery of a new primary source. Three. "Barn party." This erasure is good. But you should more explicitly compare your work to one of our primary texts, such as *A Humument*, as you make your points. But your direct observation and analysis helps you make a case about 'what sort of thing' erasure is, and what ideas it tends to provoke, such as your insight about the writing process as a 'layering' of edits. You could also take advantage of the parodic aspect of the work you did by laying out original and erased passages for comparison. Nice —and hilarious—Presentation. Four. This essay considers some aspects of transcription as an uncreative mode, using Goldsmith's example *Soliloquy* and his ideas about it as a way of thinking about the author's own transcription of answer machine messages (a witty thing to do!). There are a few missed opportunities—either to make a quote pay or to explore more fully an idea—and the paper simply flows, hitting and missing ideas, rather than being clearly and carefully organized; a clearer direction would help get your ideas across and allow them to build up to something, but overall this is satisfactory. Five. International synergy (google translate). This essay considers Richard Eskow's machine-translated answer-machine transcriptions to be multi-authored, rather than 'authored' by machine alone, but stops short where it might have pushed on to consider Eskow's valorization of chance and mechanism as meaning-making agents. Alternatively, his fondness for 'chance' could be a mystification of human programming choices hidden by the machine. Beware unnamed forces! Good, thought-provoking presentation. Six. Language Poetry and Conceptual Writing: Submitting to "Sunset Debris." This paper works with a variety of secondary sources to think about the strange genre-busting of Ron Silliman's *Sunset Debris*, a piece consisting solely of questions. The essay makes the case that Silliman's piece is neither strictly 'conceptual' poetry nor 'language' poetry; it blurs genres and fights our expectations. This is convincing enough, but it could be argued that language poetry and conceptual writing are capacious enough to include Silliman's work; or that the essay has more work to do to stably define them in the first place. The best argument this paper gives is the close reading of the question-form itself, which you say generates a strange urgency and intimacy despite its lack of narrative. Good job.

Spring 2014 Intermediate French II* (20100) - Satisfactory

Division: Humanities

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Amy Reid

Registration Status: Registered

Internal Narrative Evaluation

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This course is a continuation of Intermediate French I. Students in Intermediate French acquire fundamental communication skills in the French language, focusing on the four communicative skills: speaking, listening, reading, and writing. Intermediate French students' oral and written production should demonstrate a significant effort to work entirely in French without reference to English or other languages. Students should demonstrate an ability to understand spoken French in familiar contexts, including in films, to read short literary and cultural texts of moderate difficulty, and to express their ideas on topics of general interest in grammatically correct French when speaking and writing. This course is part of New College's liberal arts curriculum. This semester we completed chapters 7-11 of "Ensemble: grammaire" by Comeau et Lamoureux (7th edition). At the end of the semester, we read the memoir "Une femme" by Annie Ernaux and screened the film "Chocolat," by Claire Denis. In our weekly labs students examined a number of cultural texts: readings, including newspaper articles and Tristan Tzara's "Pour faire un poeme dada...", which they used to write their own dada poems using French texting abbreviations; short films, notably the animated "M. Hublot"; and music from France and Quebec. The class met 4 times a week (for 3 50-minute classes and a 90-minute lab).

Students were evaluated based on: 1) Participation, attendance & homework. 2) Nine weekly tests. Administered during the lab, these covered the grammar and vocabulary presented in "Ensemble," as well as exercises in oral comprehension and written expression. Students were expected to obtain an average of at least 75% to merit a satisfactory evaluation (the lowest test grade would be dropped). 3) Three compositions: two short creative assignments and one paper, a 3-4 pg analysis of Ernaux's "Une femme"; this assignment is designed to prepare students for the focus on literary analysis in our more advanced courses in French language and literature. 5) A group oral presentation on a Francophone region (presentations this year covered: Morocco, Cote d'Ivoire, Belgique, et Madagascar. 6) A comprehensive final exam (90 min), that short-response grammar exercises, and two essays, including one on Denis' film "Chocolat."

Anna: Overall: Anna's work was satisfactory overall, but at times she was clearly stretched thin this term, and this showed in some of her work (her first two compositions) and the difficulty she had with the grammar on the final exam. I have enjoyed working with Anna this year, and appreciated her contributions to our discussions of cultural texts (her dada/texting poem was very nicely done!). She has made good progress with her writing this term, but needs to focus on greater precision

when speaking (see the oral presentation below). I would welcome Anna in Advanced French in the fall, but she will need to be more attentive to grammar; that said, I think she would enjoy the shift to a literary focus.

Attendance & participation: Marginally satisfactory. Due to a symposium in which Anna participated, she missed a number of classes in April; these were excused and she was good about catching up on the work she missed. But she also missed another 3 classes during the semester (which is the maximum allowed).

Weekly tests: Satisfactory Anna's weekly tests averaged 81%, which is above the minimum target (of 75%), although below the class median (86.5%). Still, this shows an acceptable grasp of the material covered this term.

Compositions: Anna's compositions were satisfactory overall, with her final paper showing both promise and progress. She had some difficulty with the first two compositions. For the first ("dix promesses a moi-meme") she wrote about her desire for travel and a home in the country; the paper was satisfactory, although she missed some signaled errors on the first page. Her second composition was "Sat -" a the outset, due to problems with verb tenses; she discussed an ideal day of visits to art museums across Europe. The revision seemed hastily done; she corrected many of the verb problems but others, with spelling and agreement remained. Her third paper (3 pgs) considered the different goals Ernaux seemed to have in mind in writing "Une femme". Her draft was promising; she listed a number of goals the book seems to fulfill (a memoir of her mother, a way to exorcise her own guilt, an analysis of mother-daughter relations in a time of changing mores and social conditions) and had good quotes to support her discussion. I encouraged her to try and focus her thesis to better reflect her argument (which ultimately suggests that the book works to situate both mother and daughter in a social context). She did make changes both to her introduction and the body of the paper, but the thesis still needed to be more clearly articulated. Still, this was an interesting discussion of the book and Anna's writing was, for the most part, nicely polished. Satisfactory plus.

Oral presentation: Anna & Jordan: le Maroc Jordan and Anna put together an attractive pamphlet with interesting information about Morocco, from its geography and history to more contemporary information about the government. The pamphlet would have benefitted from more careful proofreading (Merrakech for Marrakech, par ex), but the photos included were interesting. Both Anna and Jordan need to work on the precision of their pronunciation—due to a lack of precision with pronunciation as well as to some syntactical problems, it wasn't always easy to understand what they were saying (the script they turned in was helpful for me, but I think some of their classmates missed some of the information). Anna, in terms of pronunciation, be careful about interference from Spanish and watch the ends of words (mosquée and pays each end with different & tonic vowel sounds).

Final exam: Anna's final exam was satisfactory. The exam covered the following grammar points: conditional sentences, the subjunctive, demonstrative pronouns & adjectives, possessives (adjectives, pronouns & prepositional phrases), relative pronouns, the passive and how to avoid it, causative expressions with 'faire' and 'rendre', and vocabulary; these totaled 72 pts. Additionally, there were two essays: one on the future (12 pts) and another on the film 'Chocolat' (25 pts): total 109 (there were 9 pts of extra credit). Scores on the final ranged from 73-99%; the median was 76.5% & the mean, 79%. Anna's overall score was 76% -- just above the minimum target of 75%, and close to both the class median and mean. She had some difficulty with the grammar exercises, doing well with vocabulary, but struggling with conditional sentences, demonstrative pronouns, the passive and how to avoid it, and causative structures with faire & rendre; she did better with relative pronouns, the subjunctive, and possessives. 46/72 overall. She did better with the essays, scoring 9.5/12 on the short essay using the future, and 20/25 on the longer essay about representations of violence in "Chocolat". Although there were problems with spelling and verbs, the content of her essay was strong.

Spring 2014 INTERNSHIP Maternally Yours Rosemary Birthing Center (20392) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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The internship at Maternally Yours/Rosemary Birthing Center, as the title implies, had two focal points. For Maternally Yours, a WSLR radio community show, Anna was the media intern and edited the show for uploading, a task that took one to three hours per week (her estimate) and offered Anna experience with technical aspects of radio production. I monitored the show and the facebook postings. This part of the internship was straight-forward, useful for the discipline of a weekly show and the opportunity to meet guests and trouble-shooting technical issues. For the Rosemary Birthing Center, Anna helped with general office work for four to five hours a week (her reporting), including a database on midwifery at the Birthing Center. Like many internships, the work allowed Anna to meet and engage professionals, in this case midwives and

birth assistants; those contacts are part of a larger goal for policies regarding birthing.

In a self-reflective essay that documented her activities, Anna reports "Both Maternally Yours and Rosemary Birthing Home have allowed me to explore my interest in public health policy and access in women's health and birthing." Furthermore the internship provided experience that made Anna's Planned Parenthood Global Youth Advocacy Fellowship, that took her to the UN, more meaningful. In all, a productive internship for Anna, one that brought her global anthropological concerns to our local community.

The assessment by her supervisors is very positive, detailing Anna's activities and praising her efforts; the letter is pasted below and is a fitting conclusion to this evaluation:

I am writing on behalf of Ryan Stanley, Dana King, and myself, as producers, writers and hosts of the weekly radio program Maternally Yours: a Conversation about Pregnancy, Childbirth and Parenting. Our program airs live on Tuesday nights from 6-7pm on WSLR 96.5, Sarasota's Community Radio Station, is available online and via podcast throughout the world, and is re-aired on several Pacifica Radio stations across the country. This email is to provide you with an overview of the internship your New College of Florida student Anna Rodriguez is participating in this semester.

Since joining the Maternally Yours team last Fall (under sponsorship of Dr. Fairchild), Anna has been an integral part of our weekly process. With just a week to produce each episode, our tasks include planning and scheduling topics, securing guests, writing an HTML newsletter, posting to our blog and to the WSLR parent website, social media marketing, developing questions, writing an episode outline, collecting PSA's and birth announcements from the community, editing any pre-recorded audio, hosting the episode, writing and posting an epilogue, and recording and editing the episode for podcasting on two different podcasting platforms. In no small part due to Anna's skill and dependability, our presence on Audioport has allowed our program to be 'picked up' by three other community radio stations in the country; two of those have joined since Anna's internship began.

Anna was brought on as our Audio and Visual Specialist. In that capacity, she serves as our "technical liaison", editing our weekly podcasts and uploading them to two separate podcasting platforms. Knowing that we were interested in producing a short promotional video to highlight the mission of Maternally Yours, Anna took the initiative and began filming over the January ISP. We are hopeful that in addition to honing her audio and video production skills, Anna will continue to gain insight into maternal health and mothering issues via her participation in this internship.

In summary, Anna performed the following duties for Maternally Yours during her internship since the ISP: attended general training meetings with all interns and hosts, prepared our weekly programs for both Podomatic and Audioport platforms, maintained the podcast files in Dropbox, continued filming at special events, and attended regular Collective meetings and special community events related to our mission. We are thrilled that Anna continued her internship beyond her ISP and are open to any questions you may have about her participation.

Gratefully and Maternally Yours, Laura, Ryan, and Dana Producers and Hosts Maternally Yours WSLR 96.5 LPFM | Sarasota, FL

Spring 2014 East African Anthropology (20082) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Erin Dean

Registration Status: Registered

Internal Narrative Evaluation

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This course was an intensive survey of the anthropology of East Africa with a particular emphasis on Tanzania. East Africa is the birthplace of humanity and the current home of many diverse groups of people, so it is not surprising that the anthropology of the region is prolific. While much of the course referenced historic and contemporary cultural anthropology, readings also spanned the fields of archeology, linguistics, and physical anthropology. Because it was regionally focused, the class was able to be topically wide-ranging. Issues explored included early hominid evolution, evidence of settlement and migration, colonialism and its legacy, multi-party democracy, language and identity, conservation and development, traditional and emerging music, and gender and the changing forms and explanations of witchcraft and the occult. Texts included two ethnographies, Live From Dar es Salaam: Popular Music and Tanzania's Music Economy (Perullo 2011) and Beyond Bodies: Rainmaking and Sense Making in Tanzania (Sanders 2008), in addition to extensive reading on reserve. Students completed two 8-12 page research papers, the first exploring historical issues in East African anthropology and the second exploring a contemporary case study. Evaluation is based on attendance and participation in class discussion, an in-

class presentation of the final research project, and the quality of written work.

Overall Evaluation: Anna only had one excused absence this semester. She was a great addition to this class, and while I wish she had spoken up even more in discussion, her contributions were always insightful and productive. Her written work was strong and focused, demonstrating research skill in addition to writing skill. Satisfactory.

Below are specific comments on course assignments:

Paper #1: Social Iron Smelting in East Africa Anna did great work on this paper. There is obviously rich symbolism associated with iron smelting, and she explores some of the most interesting aspects. I suggested she could look in more depth at what this symbolism reflected in its respective societies, particularly since that is what her thesis statement suggests. However, it is also important not to draw too many conclusions without sufficient information. Overall, this was a very interesting and well-written paper. Satisfactory.

Paper #2: (Re)Creating Identity: Yao Tradition and Islam In her final paper, Anna explores how Islam has emerged as one of the principal identity markers among the Yao of Malawi, Mozambique, and Tanzania. She traces the way Islam was introduced and evolved among the Yao, and the how the Yao merged it with their "traditional" practices and worldview. In particular, she explores Yao circumcision practices and medicinal knowledge in the context of Islamic faith. Throughout, she argues for a conversion narrative the acknowledged Yao agency and creativity. This is a well-written and successfully argued paper. Anna found some interesting sources here, and she used them effectively to explore this interesting case study. Satisfactory.

Presentation: Anna's presentation of her final research project was well-organized and interesting. She gave a good overview of Yao history, and her discussion of Islam and "folk" Islam as identity markers was useful. Satisfactory.

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Beginning Modern Standard Arabic		A	6	Study Abroad in SIT Morocco
Independent Study Project		A	4	Study Abroad in SIT Morocco
Multiculturalism and Human Rights		A	3	Study Abroad in SIT Morocco
Research Methods and Ethics		A	3	Study Abroad in SIT Morocco

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Human Origins and Evolutions	Anthony Andrews		4	
History of Anthropological Theory	Maria Versperi		4	
Tutorial: Internship Maternally Yours Radio Program	Emily Fairchild		4	

Spring 2015 INTERNSHIP Maternally Yours Radio Program (20477) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term

Instructor: Emily Fairchild

Registration Status: Registered

Internal Narrative Evaluation

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This was a continued internship for Anna, partnering with the weekly Maternally Yours radio show in WSLR in Sarasota.

This term, Anna was responsible for outreach efforts aimed at increasing the areas in which the show airs and with training the new intern responsible for podcasting (a responsibility she had in past semesters). She was also supposed to plan/produce one radio show that would air this summer.

Evaluations from her supervisors are generally positive, with high ratings for professionalism, quality, of work, communication, and ability to learn. They commented that she could take more initiative, including as related to being a bigger part of the show; they would be willing to work with her if she should this initiative. They also noted that she "somewhat" showed continued progress over the term. I would have liked these evaluations to be stronger, especially given Anna's experience with the show.

For the academic component of the tutorial, Anna was to compile an annotated bibliography related to the show she was producing. She did a fine job with this, describing 15 sources from a variety of academic publications and presentations. Unfortunately, she did not submit the outline of the show as we discussed for the requirements of this tutorial. This is a serious disappointment, and tarnishes the evaluation. Mod Sat.

Spring 2015 Human Origins and Evolution* (20153) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Anthony Andrews

Registration Status: Registered

Internal Narrative Evaluation

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This course offered an introduction to Biological Anthropology, and focused on the origins and evolution of the human species, as well as that of our ancestors and closest relatives among the non-human primates. Special emphasis was placed on evolutionary theory, primate evolution and behavior, human paleoanthropology, and contemporary human diversity, adaptability, and survivability. The class format consisted of lectures, with limited class discussions of the issues and readings. Most of the readings were from three texts: Introduction to Physical Anthropology (Jurmain et al. 2011-12), Physical Anthropology 12/13 (Angeloni 2012), and Lucy's Legacy: The Quest for Human Origins (Johanson & Wong 2010). Additional readings, placed on electronic reserve, included current articles in Nature, Scientific American, National Geographic, and other sources. Evaluation of student performance is based on two exams.

Midterm Exam: Essay 5 was only partially correct, and a few weak spots were noted elsewhere in the margins. Otherwise, a very strong set of essays. Great coverage and presentation of the course material.

Final Exam: Very nice set of essays, thoughtful and well-written. In essay 5, you could have included population growth and pollution as major players in our current environmental crisis. Otherwise a great exam!

Anna did very well in this course. It is clear that she mastered the materials and developed an excellent understanding of the issues.

Spring 2015 History of Anthropological Theory (20150) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Maria Vesperi

Registration Status: Registered

Internal Narrative Evaluation

The content of this Internal Narrative Evaluation is a personal communication between the professor and the student. Only the student may provide this evaluation to external audiences. An Internal Narrative Evaluation is never included as a component of the official academic transcript.

This seminar was designed to provide an overview of Western theories about the nature of society and the significance of cultural difference. From the work of Greek social thinkers to the models proposed by contemporary anthropologists, students explored how theories about human nature and the relationship between the individual and society have developed within a context of larger historical, philosophical and political trends. Particular attention was paid to the emergence of anthropology as a distinct academic and research discipline, from the late 19th-century to the present. Reading assignments were substantive, with a focus on primary source materials. Evaluation was based on four short (4-6 page) critiques of theoretical models presented in the readings and mastery of theoretical concepts as demonstrated through contributions to the seminar discussion.

Anna was a well-informed presence in this seminar. She attended conscientiously and almost always managed to get a seat at the table in our crowded classroom. She was attentive to the discussion and while she was not among the most active discussants, her comments always reflected good preparation and clear command of the material. I have to say that participation was not easy in such a large group, but the dynamic was quite lively and Anna contributed her share.

Anna's written work was consistently well developed and promptly submitted. She did a good job comparing three widely spaced examples in her first critical essay, "Exploring Value Judgments and Morality from Herodotus to Morgan." I did have a few suggestions: her paper would have been a bit stronger with background from Baker and/or Stocking, who provide solid social-historical context for the era in which Morgan wrote. Also would have been good to cite Morgan himself as a primary source, rather than relying on Moore for this part. Overall, however, this was a fully satisfactory and nicely written first effort with the material of our course. Anna's second critique was very nicely done as well. She did not provide a distinct thesis statement, which I recommend, but she presented a clearly developed and well-organized argument nevertheless. She included good historical context for most of the authors, but I wanted to make her aware that recent scholarship has taken a second look at Booker T. Washington as well. The same constraints applied to him, of course, and there is slim but significant evidence that he was much less conservative than usually presented. A thoughtful, carefully constructed and strongly satisfactory second essay.

"Thick Description and Positivist Anthropology" was a carefully constructed comparison of Levi-Strauss and Geertz. Anna worked directly from the primary sources, which was very strong; she is clearly confident in exploring original works without relying on secondary sources to reveal the theoretical frame or tease out meaning. The focus was more on Geertz than Levi-Strauss, and Anna raised some excellent points we did not explore in class, such as the role of writing itself in establishing Geertz's authority and leaving the reader little room for alternative views. Anna's comments about Levi-Strauss were accurate as well, except maybe that he was less concerned about anthropology than the social sciences in general. I think the only thing missing from this essay was a nod to the wider tradition from which Geertz came, although she did note this with Levi-Strauss. An excellent essay, well-organized and effectively presented.

For her final critique, "(White) Theory of Power and Black Vernacular," Anna took up Gates' challenge and offered a carefully considered discussion of knowledge and power in relation to black vernacular. This was a very relevant topic, and Anna made careful use of Foucault's lectures on knowledge and Bourdieu's idea of practice theory to support her discussion. Her comments about the limits of Bourdieu's original conceptualization of habitus were helpful, too. A really great topic, and fodder for further exploration in a longer essay and/or as one of the ways to discuss subjugated knowledge in her thesis project.

Anna's performance in this course was strongly satisfactory in all respects. It was a pleasure working with her, and I look forward to helping her in the fall as she develops her senior thesis. She is also very welcome to enroll in future seminars with me.

Fall 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Tutorial: Thesis: Background Research	Maria Vesperi		2	
Independent Study Project: Internship Multicultural Health Institute	Lisa Merritt		4	
Tutorial: Internship Horn Business	Tracy Collins		4	
Anthropology and Literature	Maria Vesperi		4	
Entomology	Emily Saarinene		4	

Fall 2015 Thesis: Background Research (80402) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term - Mod Credit Equival

Instructor: Maria Vesperi

Registration Status: Registered

Internal Narrative Evaluation

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Anna has taken on a complex, multi-faceted topic for her thesis research and she is approaching it with respect and care. For this full-term, mod credit tutorial she focused on reading key works that provide historical and theoretical context for understanding how to frame, present and analyze the abortion narratives she is reading online. This was rich material but none of her initial sources provided an anthropological perspective; I suggested a reader on doing feminist ethnographic research that proved helpful and also urged her to consult several theses and additional sources within anthropology. Anna did a lot of reading and also successfully modified her IRB protocol so that she could interview a researcher who provides abortion doula services and is interested in refocusing the attention paid to abortion narratives.

Anna and I met once a week to discuss her progress, which was steady overall and understandably much stronger once she had submitted her Fulbright application, her application for language training and other time-sensitive commitments. I always enjoyed our discussions; she asks good questions and she is quick to follow up on editing suggestions. I enjoy reading Anna's work. She made substantive progress on completing her introductory chapter, which she plans to finish and submit to me during ISP. I encouraged her to move quickly on the final selection of narratives from her online sources, as she will need to begin transcribing and discussing them as soon as possible. Anna has the ingredients for an outstanding thesis and the skills and commitment needed to put them together. I am excited about her thesis and I look forward to working with her as she moves to completion next semester.

Fall 2015 Entomology* (80098) - Satisfactory

Division: Natural Science

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Emily Saarinen

Registration Status: Registered

Internal Narrative Evaluation

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This course was divided into three sections; beginning with an evaluation of insects as organisms, followed by insect ecology, and concluding with insect diversity. We used the foundational text "Daly and Doyen's Insect Biology and Diversity" as well as supplemental readings and materials throughout the term. Class discussion and multiple group activities were framed from an evolutionary perspective, especially as we evaluated insect structure, function, and diversity. Students' subject mastery was assessed by quizzes and an exam after each of the three course sections. Students also explored an additional topic of their own choosing through research that culminated in a term paper. Additional skills assessed related to team work, participation, and scholarly growth. This course was appropriate for students with a general interest in entomology while also serving as a platform for those considering entomology as a career.

Anna Rodriguez Quiz average: 8.7/10 Exam 1: 45/70 Exam 2: 58/60 Exam 3: 63/80 You satisfied the quiz average and the last two exams. You did not satisfy the criterion for Exam 1 but, overall, you show mastery of subject material and considerable growth. Good job!

Term paper – SATY You wrote your term paper on the rise of the insect-vector disease Chikungunya in the Dominican Republic. I did not see your specific RAFT format spelled out (role, audience, format, topic), which I had required as part of the assignment. This made it difficult to evaluate the paper as I was unclear at the outset on the role, audience, and format. The paper itself was very informative and you use a good bit of appropriate entomological terminology (related to insect development, behavior, and morphology). You included perspectives on the biology of the Aedes mosquitoes (the vector) and the spread of the disease over space and time. You highlighted the impact of the disease with a personal account. You turned in your completed KWL chart and it demonstrates your growth in the subject area. You had a meeting with an associate of the writing center and that feedback indicates that it was a useful meeting. You used a good variety of resources and they are, for the most part, properly cited in the references list. You wrote very clearly and succinctly, and I consider this to be a successful report. Good job! 43/50

Your group work was good and your group members noted that you were a helpful group member. In fact, it was a pleasure to observe the careful, interpersonal dynamics in your group. You had a diverse set of backgrounds, and I appreciated how you solved subject-matter questions and problems together. Your attendance in class was excellent, but you did not contribute to in-class discussion or ask questions. In fact, I do not believe you ever spoke or asked a question in class, which is disconcerting considering the collaborative atmosphere in this class. Overall, you demonstrated a good knowledge base in the subject and an appropriate level of growth over the term. It was a pleasure working with you this term and I hope you enjoyed the semester in entomology.

Fall 2015 INTERNSHIP: Horn Business (80403) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term

Instructor: Tracy Collins

Registration Status: Registered

Internal Narrative Evaluation

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The following is the evaluation for Anna Rodriguez that is based on her internship with Lawrence Levine at 8eo, Inc.:

Anna was an ambassador for Horn this semester. This meant spending time greeting people and helping to identify ways of making the platform better. Anna also wrote an account of the time spent on the platform and included not only a review of the user interactions and discussion of the user interface but also provided insight into additional features, like the inclusion of small pieces of visual and textual information, which users could find valuable as the platform evolves. I appreciate Anna's efforts and hope she will continue to participate as an ambassador moving forward.

Fall 2015 Ethnography: Method and Theory (80132) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Erin Dean

Registration Status: Registered

Internal Narrative Evaluation

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This course combined theoretical and critical readings with practical instruction in the field research methods used by cultural anthropologists. Students became familiar with the techniques of participant-observation through "how to" readings and by proposing, designing and conducting 10-week field projects in the local area. Class discussion was focused on methodology and the weekly progress of each person's project, plus the critical reading of ethnographic texts with attention to how the expectations, products, and ethical implications of field encounters have shifted during recent decades. Each student was evaluated on the basis of a research proposal, an ongoing field notebook submitted at intervals throughout the term and a final ethnographic report which included citations from assigned readings. Active participation in the seminar was also required.

Anna, you were a valuable participant in class this semester. You contributed regularly to class discussion, though I wanted to hear even more of your thoughtful insights about course reading. You were also very supportive and helpful to your fellow classmates, offering advice and useful practical tips to other students, including one who ended up researching at a site you knew well. This peer support is an important part of the class, and I appreciated your participation.

You did your research project at WSLR, a community radio station. You interviewed people involved in four different radio programs, though you concentrated most on Maternally Yours, a show where you had previously interned. You had some hesitation about at least one of the people you interviewed, but you ultimately found it useful to have his perspective. Your field notes start strong and thorough, but there is very little in your field notebook from the second part of the semester. It isn't clear that kept up your research momentum throughout the semester, though there are some points of deep engagement.

Your final paper is called "Working Their Mission: Community-supported Radio at WSLR." You generally divide the paper into sections based on the show you are describing, though there are common threads between them, such as how the artists started their shows and their thoughts about the homeless community that are (were) often near the station. It would have been useful to have a section drawing out some of the comparisons and contrasts more explicitly. Your methods section is thoughtful and uses course reading, namely Clifford's work, to good effect. I appreciated your commitment to reflexivity throughout the paper. I also really liked your final, "experimental" paragraph, where you mix different peoples' words and voices to create a collective depiction of the station. I was interested in what it suggests about the collaborative nature of the space and the way the different approaches of the various shows and personalities construct a cohesive—but maybe also contested—community.

Overall, this was an interesting ethnographic project with a good effort on your final paper. Your work for this course is Satisfactory.

Fall 2015 Anthropology and Literature (80131) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Maria Vesperi

Registration Status: Registered

Internal Narrative Evaluation

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The decades since Clifford Geertz urged anthropologists to practice "thick description" in the construction of ethnographic texts have been marked by increased concern with narrative voice. At the same time, techniques of structural, post-structural and postmodern analysis used by philosophers and social scientists have profoundly influenced the field of literary criticism. Drawing from a wide range of essays, ethnographic texts, fiction and poetry, this course examined techniques of representation and how relationships between literature and culture are identified, or in some cases, misconstrued. Course requirements included three critical essays on class readings and an oral report from our list of supplementary readings, supported by an independently researched bibliography. Students were evaluated on the basis of written work, oral presentations and contributions to the seminar.

Always a welcome participant in my courses, Anna was well focused and she displayed an active appreciation of the texts and close attention to the complexities of ethnographic projects. She worked to compare, evaluate and synthesize concepts from both anthropology and literature, broadening her foundation in both disciplines in the process. I often found myself making eye contact with Anna; I knew I could always count on her for insightful analysis. She was a major contributor to this class.

Anna chose Rabinow's *Reflections on Fieldwork in Morocco* as the subject of her oral presentation. She began with useful background on the author, the historical context within which he was writing and the debates just beginning in anthropology at that time. She offered a reasonably economical plot summary, not easy with a narrative such as this. Anna touched on many themes from the course in her analysis, and she remained careful not to veer into an anachronistic critique of Rabinow's ethics or his approach to gender. Anna really captured the attention of the seminar group and there were interested questions. I found this presentation very strongly satisfactory.

Anna's first critical essay, "Fantasy and Trauma in *The Secret Life of Bees*," was strong and well-stated. She made a lot of salient points, and I agree with them. Very productive use of Morrison; there were places where Lloyd could have been employed more systematically as well. I wish Anna had commented directly on what the implications for anthropology might be. With regard to her discussion about the scales of violence, Kidd goes there in her most recent book, *The Invention of Wings*. This time she presents the experience of slavery through the eyes of a young white child and a young enslaved child. This supports Anna's point that all of the historical concerns Morrison highlights are still in play. Good essay.

"The Kentucky Derby as New (New) Journalism," Anna's second essay, offered a very interesting treatment of this genre. I agreed with Anna that there is a progression, not two strictly demarcated trends. It is good to understand the devices and their effects because there are significant implications for ethnography. Anna put forward a solid effort with material that must have been quite new to her. I hope it will prove helpful in analyzing some of her thesis narratives.

Anna ended the course on a very productive note with her final paper, "Public Art vs. Art in the Public: An Analysis of Kramer's *Whose Art Is It?*" This was a very good essay and admirably balanced; Anna was again careful to note the morays of the time in discussing Ahearn, Kramer, and the introduction to the book. I agree that the introduction puts a spin on Kramer's journalism that she might not have intended, and I think if I use it again I will omit the introduction altogether. Very good paper, and with Anna's permission I would like to keep it for my student file. Anna's work in this seminar was strongly satisfactory in all respects. I really enjoy working with her.

Spring 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Tutorial: Thesis	Maria Vesperi		4	
Tutorial: Internship Center for Sexual Pleasure and Health	Uzi Baram		4	
Method and Theory in Archeology	Uzi Baram		4	

Spring 2016 INTERNSHIP: CSPH (20425) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Internal Narrative Evaluation

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Cassandra Corrado, Programs Manager and Social Media Strategist for The Center for Sexual Pleasure and Health (CSPH) offered the below as an assessment for Anna's internship in social media. As an alumna, the supervisor uses the New College jargon in the assessment:

"Anna interned with The CSPH, a 501c3 organization dedicated to reducing sexual shame, challenging misinformation, and advancing the field of sexuality, for the Spring 2016 semester, but began her work before the other interns in her cohort did. She took the initiative to approach me with projects that she might be interested in so that we could work on their drafts and have more time for the editing process. Specifically, she wrote educational pieces for our "Smashing Shame" sexual health series, which will debut in June. Once they publish, Anna will be able to add them to her clip file as officially published articles, distributed online.

"Anna also researched terms for our Adult Sex Ed Month educational promo for June 2016, and wrote short blog posts for each term. This is time-consuming work, and it can certainly be tedious. Anna was a good sport about it, though, and her blog posts were thoughtful and detailed. She approached her supervisors (myself and another staff member) when she had clarifying questions or questions about tone. "Although Anna did a lot of writing work during her internship, her primary role was to work in social media. Anna managed The CSPH's Facebook page, and maintained consistent growth of our audience base and our engaged user base. One week after Anna completed her internship, our Facebook page hit 7,000 followers -- 2,000 more than we were at in May of 2015. That growth rate is impressive for a small, sexuality-focused non-profit -- Facebook's algorithm does not favor sexuality-related content or non-profit organic content. This growth would not have been possible without Anna's work. She actively maintained the page's content without needing to be prompted, and after a few weeks, she was able to post to our page with minimal supervision. I felt confident enough to let her respond to contentious issues on our page, something that has previously never been delegated to an intern. She responded to all inappropriate messages with grace. "In addition to her editorial and social media work, Anna wrote book and product reviews, watched and took notes on webinars, attended our Careers in Sexuality workshop, and had the opportunity to shadow our Executive Director, Kira Manser, at an educational workshop at USF Sarasota-Manatee. I am happy that Anna had the opportunity to see one of The CSPH's workshops while she was working as an intern. "I wish that Anna were able to be a local intern, because I feel that she would have been able to get much more out of the intern program -- both socially and professionally -- if she were able to have been in Providence. As a former distance intern, I know that it can be a difficult and sometimes alienating experience. Anna was assigned to cowork with other local interns, which she indicated was sometimes difficult in her intern reports. "In all, Anna's work was strongly satisfactory, and I would be happy to work with her on a more involved project in the future." The assessment fits my evaluation of Anna's efforts: overcoming challenges of distance, responding to contentious issues with grace, and demonstrating impressive skill sets with social media. In all a successful internship.

Spring 2016 Thesis (20424) - Satisfactory

Division: Social Sciences

Type: Tutorial

Session: Full Term

Instructor: Maria Vesperi

Registration Status: Registered

Internal Narrative Evaluation

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Anna attended almost all of our weekly group meetings and she was always well prepared with questions about her thesis. She was very aware of the time frame and she planned accordingly, conscientiously pushing herself to draft sections of text so that I could review them and provide feedback. We had good conversations about how she might best represent the individual narratives and also the larger topic of representation in the highly charged political and social contexts surrounding abortion. She addressed this in a disciplined manner, working through the implications of her statements with a

critical eye and addressing each of my comments on her drafts. As the semester went on and she began to spend more and more time with the narrative texts, we also discussed the emotion work required to maintain empathy while trying to keep the distance needed for analysis. Anna was very responsive to editing; I always felt that my time was well spent and I rarely saw the same mistake twice. Her efforts to complete her thesis this term were strongly satisfactory, and I would like to add that working with her on this project was a gratifying experience for me.

Spring 2016 Method and Theory in Archaeology (20158) - Satisfactory

Division: Social Sciences

Type: Course/Seminar/Topics

Session: Full Term

Instructor: Uzi Baram

Registration Status: Registered

Course Information

Method and Theory in Archaeology, as a seminar, surveys the field and analytical methods of archaeology and scrutinizes its theoretical premises. The course examines the structure and history of the subdiscipline, approaches and interpretations of the past, social change, and material culture, and temporal and behavioral frameworks used in archaeology as part of anthropology. Readings and case studies focused seminar discussions. The course fulfills a requirement of the Anthropology AOC.

For Spring 2016, texts included Don Henson 2012 *Doing Archaeology: A Subject Guide for Students* as a primer on methods and techniques; Alan Kaiser 2014 *Archaeology, Sexism, and Scandal: The Long-Suppressed Story of One Woman's Discoveries and the Man Who Stole Credit for Them* to bring out the socio-politics and intellectual property rights issues for archaeology, and Robert Preucel and Stephen Mrozowski, editors, *Contemporary Archaeology in Theory: The New Pragmatism*, for its thirty-two chapters. Students also were assigned an additional thirty-three articles/book chapters. Current scholarship in archaeology focuses on pragmatic approaches, concerns for communities and pressing social issues, and an erasure of the divide between past and present so the semester reflected those concerns. Coursework included attendance, participation in activities (artifact washing, small-group brainstorming sessions, classification exercises, and a fieldtrip) and discussion, a visualization of theory, a three-minute presentation on an archaeological technique (that included a peer review), an exercise on diversity and materiality, observations on a landscape, and a final project – a theoretically-informed case study. Members of the class received commentary on each component of the course so this narrative provides a record of attendance, an assessment on class participation, a summary of the previous commentary, and an evaluation of the final project.

Internal Narrative Evaluation

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Anna missed just two class sessions over the semester.

For the first assignment, visualizing theory, Anna used Doctor Who as the image, offering a clear statement on theory taking one through time and space; the tag line "...its bigger on the inside" completing the nuanced and engaging presentation.

The course challenged students to present a technique within three minutes as an exercise in public presentation. Anna offered a concise overview of oral histories for archaeology by focusing on the Japanese internment camp in northern Idaho; the choice of an image – a survivor at the fence looking at the former camp site – made for an emotionally compelling presentation, one of Anna's skills in oral presentations.

The third assignment focused on observational skills and guided by Taçon, Anna's four-minute video on Phillippi Estate Park offered a tour of the property, focused on a wide-range of elements. The voice-over explains what is being seen as well as reasons for seeing for this landscape. The video needed editing, both to exclude background noise and to resolve the shaking of the camera but the script makes the choices of elements clear and connects to the critique of vacant land, opening up, the meanings of this landscape. The concluding line – remembering the peoples who made the same walk – was evocative poetry regarding this landscape and the heritage interpretation project. Getting this last chance to see Anna's film-making skills was a treat.

For the final project, Anna returned to a site she explored for the Landscape course her first year, and employed the methodology from her thesis project, a fitting capstone to her efforts in anthropology courses. Focusing on the issue of representation for La Isabela and Concepcion de la Vega and animated by the course concern for descendant communities,

the project used tripadvisor as a datasource for the public perception of the Columbus landing site in today's Dominican Republic. Organized as a blog, the presentation is engaging and informative. The discussion could have gone deeper but for a graduating student, with all the College asks during the last weeks, the work was creative and engaging. The focus on ethics of representation, and the ability to successfully connect a new source of data for public archaeology, the details on the archaeology and history, and the innovative presentation made for an excellent conclusion for this course. The skill sets shown here demonstrate Anna's mastery of course concerns and willingness to experiment with representation; I will try to turn her work into an assignment for a future course and, if successful, that will be a fitting legacy for her innovative approach to coursework.

Grading System Description

INSTITUTIONAL HISTORY

New College of Florida is a public college, designated the residential liberal arts honors college of the State University System of Florida by the state legislature in July, 2001. Founded in 1960 as a private college for academically talented students, New College was first established as a public honors college when it joined the University of South Florida (1975-2001) as "New College of the University of South Florida." Throughout its history, New College has retained a distinctive academic program, emphasizing the development of exceptional skills in critical analysis and research.

ACCREDITATION

New College of Florida is accredited by the Southern Association of Colleges and Schools Commission on Colleges to award Bachelor's degrees and Master's in Data Science degrees. Contact the Commission on Colleges at 1866 Southern Lane, Decatur, Georgia 30033-4097, telephone 404-679-4500, at <http://www.sacscoc.org> for questions about the accreditation of New College of Florida.

CREDIT SYSTEMS

The unit system is used at the undergraduate level. One unit is equivalent to four (4) semester credit hours. The semester credit hour system is used at the graduate level.

ACADEMIC CALENDAR SYSTEM

Fall 1981 – Present: New College operates on a 4-1-4 calendar system. The academic year consists of two 14-week terms, each divided into two 7-week modules, with a 1-week recess between modules, and a 1-week examination/evaluation period after the fourteenth week. A 4-week independent study project (ISP) interterm in January separates the two 14-week terms. Only undergraduate students engage in independent study projects during the interterm. In some years, the College may offer summer courses.

UNDERGRADUATE EVALUATION SYSTEM

New College does not assign letter grades or calculate grade point averages for degree-seeking undergraduate students. Only those educational activities completed satisfactorily are recorded on the official transcript: courses, labs, tutorials, internships, independent study projects, and independent reading projects. Each full-term educational activity completed satisfactorily in a 14-week term and each satisfactorily completed January ISP carries the equivalent of four semester credit hours. An activity satisfactorily completed as a module (half of a term), or modular equivalent, carries the equivalent of two semester credit hours. A satisfactory assessment indicates substantial effort, productivity, and progress. The underlying assumption is that New College students perform well, not just adequately.

New College's academic program focuses on demonstrated competence rather than on the compilation of credits and grades. At the conclusion of each term, students receive an assessment of their performance followed by a narrative evaluation from the faculty member overseeing each educational activity. Evaluations are not intended as substitutes for grades and are never converted to grades. The narrative portion of the evaluation is a personal communication between the professor and the student. Beginning with the fall 2016 incoming student cohort, narrative evaluations may be provided as a component of the official transcript, at the request of the student. Students who first entered New College prior to fall 2016 are responsible for providing narrative evaluations separately from the official transcript, if needed.

Anna Rodriguez
Clerkship Recommendation

February 16, 2021

Dear Chambers,

My name is Noel León, and I am an Associate at Emery Celli Brinckerhoff Abady Ward & Maazel LLP. Previously, I was Senior Counsel and later Interim Director of State Abortion Access at the National Women's Law Center (NWLC). I write to give my highest recommendation in support of Anna Rodriguez's application for a clerkship.

I have supervised Anna in two capacities at the National Women's Law Center. During the summer of 2019, Anna was an intern on the Reproductive Rights and Health (RRH) team, and I, then Senior Counsel, worked with her directly on several projects. As an intern, Anna was bright, diligent, proactive, and utterly reliable. She managed multiple assignments from several RRH team members, and she met or exceeded what was requested of her every time, on time. Anna handled legal research and writing assignments capably, returning clear and concise work product that was extremely helpful to the team. She also produced excellent policy materials, including factsheets and blog posts, reflecting accurate and thorough research in addition to great writing skills. Her time and project management skills were already well-honed as an intern, as she easily managed long-term projects alongside rapid-response work. Throughout, Anna was a joy to work with. She brought warmth, familiarity, and humor to every interaction with both her peers and supervisors. Our weekly check-ins were consistently some of my favorite moments all week because not only could I count on her research and insightful thoughts on the projects we worked on together, I could also look forward to laughter and connection.

The RRH team was so impressed with Anna's work and so enjoyed having her on the team that we sought to bring her back in a more substantial role.

Anna thus returned to NWLC in the fall of 2020 as a Legal Fellow. I supervised her in my role as Interim Director of State Abortion Access from the start of her fellowship in early September until I left the organization on January 11, 2021. Anna's fellowship focuses on developing strategies and supporting ongoing NWLC work to protect and expand abortion access at the state level. This work involves quite technical legal research into the impact of proposed and enacted legislation on abortion access, in addition to the demanding work of engaging with partners and coalitions of many stakeholders to strategize joint and complementary approaches to policy work. Anna has also taken on longer term projects, including a brief on the impact of COVID-19 on abortion access and policy solutions to protect access as the health and economic crises continue. Anna drafted this expansive brief quickly and thoroughly. Her draft demonstrated a clear understanding of the issues and policies at stake, as well as simply excellent writing.

Anna has also become the point person on the RRH team for tracking and analyzing ongoing litigation around abortion bans and restrictions. This work has required Anna to quickly analyze court orders and familiarize herself with the procedural twists and turns that constitutional litigation can take—all well enough to be able to explain it to other team members who may or may not themselves litigate. Her ongoing tracking and analysis has been immensely helpful to

Anna Rodriguez
Clerkship Recommendation

me, to NWLC's Director of Federal Reproductive Rights, and NWLC's Director of Reproductive Rights and Health Litigation in being able to keep up with dozens of cases challenging abortion restrictions across the country.

Anna tackles these varied demands of her fellowship with ease and enthusiasm. She always responds extremely well to feedback, receiving comments, questions, and revisions with openness and flexibility while remaining independently thoughtful about the task originally set before her. She has also gone beyond what is asked of her, proposing new internal processes to improve communication and efficiency on the RRH team and jumping in to help with projects that are not squarely within her fellowship bounds. On top of all of this, even in a remote environment, Anna's presence continues to bring humor and warmth to online interactions, both one-on-one and in a group.

I recommend Anna for a clerkship without reservation. She is one of my favorite people I have ever supervised. She is incredibly reliable. She produces excellent written work, reflecting thorough research and analysis, and she does so on exactly the timeline we jointly set out for her. She is easy to talk to both casually and about substantive work. She is generous and patient with her colleagues. She would simply be an excellent member of any team. As her two-time supervisor, and as a former U.S. District Court clerk myself, I have no hesitation in saying that Anna would be a superb clerk.

Please feel free to reach out to me with any further questions.

All the best,

Noel León
nleon@ecbawm.com
501-519-3787

March 3, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am delighted to recommend Anna Rodriguez for a clerkship in your chambers. Anna was a student in a writing seminar on Law and Inequality that I co-taught during Fall 2018. Her outstanding performance in that class – fueled by her capacity for critical analysis and her exceptional writing skills – makes clear that she would be an excellent law clerk.

The Law and Inequality seminar aimed to expose students to various genres of legal scholarship on inequality, while guiding them through the process of writing their own substantial research papers. Students read work grounded in legal doctrine and critical race theory, as well as experiential storytelling, legal history, and other humanistic modes of analysis. They were divided into small writing groups, in which they completed a series of short exercises involving different forms of writing, from personal narratives to op-eds, on the topics that would ultimately ground their research papers. Finally, they wrote those papers, workshopping different portions for their writing groups and revising according to the critiques they received from their classmates and instructors. It was a demanding course that required a great deal of writing; and it challenged students to move well outside the 'comfort zone' established by their first year doctrinal classes. Anna excelled at all of these challenges.

Anna came to the seminar with substantial writing experience outside the law, in areas ranging from poetry to op-eds. Thus while other students were only beginning to engage forms of legal scholarship outside standard doctrinal analysis, Anna was already reading with comfort and confidence, illuminating class discussion with provocative insights about the works we studied. She was also keen and helpful in analyzing the papers of her classmates, as the workshop portion of the course unfolded. Anna's own paper, a trenchant analysis of gender in the Dominican culture in which she grew up, was a striking tour de force. It not only offered subtle, surprising perspectives on masculinity and femininity in that context, but encompassed a range of genres, from legal analysis, to storytelling, to original poetry and analysis of the poetry of others. There was nothing remotely like it among the papers we received for the course: it was easily the best paper in the class, earning Anna a HH and the Am Jur Prize in the course.

Anna is equally comfortable and proficient with more familiar forms of legal analysis. After the course, she asked me to read and critique another paper she was writing, on religious refusals in the area of reproductive health care. This paper, which focused primarily on an emerging body of case law, reflected clear organization, meticulous expositions of doctrine, and cogent, pragmatic analysis. My engagement with Anna on her draft also confirmed a quality I had seen in her during the course: her receptivity to constructive criticism, and her persistence in surmounting obstacles and refining the quality of her work. Anna's strengths at legal analysis and writing have only been enhanced by the challenging work she has taken on since her graduation. In a fellowship at the National Women's Law Center, she has focused on state abortion access work, supporting state partners during their legislative sessions, writing committee testimony, analyzing potential policy impact and finding innovative litigation strategies using state law (such as using medical malpractice tort law to fight religious refusals of care).

It was a true pleasure to work with Anna, whom combines intellectual acuity and creativity in a way that I have rarely seen in a law student. She will bring to any legal task her enormous energy and the power of her wide-ranging intellect. I recommend her with greatest enthusiasm.

Sincerely,

Kathryn Abrams
Herma Hill Kay Distinguished Professor of Law
UC Berkeley School of Law

Kathryn Abrams - krabrams@law.berkeley.edu - 510-643-6355

February 16, 2021

Recommendation for Anna Rodriguez

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to offer my most enthusiastic recommendation for Anna Rodriguez, who has applied for a clerkship in your chambers. Anna is a first-generation American and a first-generation college student with an indomitable spirit and prodigious talent. She's a budding scholar, a committed social justice activist, a community leader, and a magical writer. Anna would be a stellar law clerk, even as she would benefit tremendously from the experience.

By way of background, Anna was born and spent the first decade of her life in the Dominican Republic. Her parents, though working class, strongly valued education, and sacrificed greatly for her, including moving the family to Florida to secure better schooling. Anna seized the day, rapidly progressing from remedial English to honors classes and then matriculating at Florida's designated honors college, before arriving at Berkeley Law.

This is not, however, simply the story of a cherished child doing well. Her family also had more than its share of internal strife and pain. Anna has seen the raw edges of human existence, to use a phrase from Justice Blackmun. She's not without metaphorical injuries that she continues to mend. But out of this combination of love and hardship, Anna has developed a fighting spirit and an unshakable commitment to help others. This is her core, with the skillset of an exemplary student layered on top.

I know as much as I do about Anna because I worked with her closely in a social justice writing seminar I co-taught with Professor Kathy Abrams in the fall 2018 semester. Our goal was to assist talented students focused on social justice issues who sought to write for publication. In her seminar paper, Anna wove together her experiences with domestic violence and patriarchy at home, the culturally corrupting role of strongman rule in the Dominican Republic, and contemporary US politics, and she did so through poetry, narrative prose, and historical and political analysis. Her storytelling helped me understand her own biography, even as she used her story to illuminate aspects of the larger world.

Anna wrote a poignant, brilliant essay. Among the fourteen exceptional students in the seminar—a group that included three PhD candidates—only one student received a grade of High Honors: Anna. Professor Abrams and I were also delighted to award her the American Jurisprudence award for the best performance in the class. I'm also thrilled that her essay is forthcoming in the Berkeley La Raza Law Journal. Anna also takes editing very seriously, including by serving as a symposium editor for the La Raza Law Journal, and also by helping to found See Also, Berkeley Law's first literary student journal.

Anna has a strong interest in reproductive issues, broadly defined. In my course on race and American law, for instance, Anna volunteered to organize and teach a class on race and reproductive rights—she was the only student to show such initiative, and did a terrific job. She was also very actively involved leading two student groups: If/When/How: Lawyering for Reproductive Justice; and the Reproductive Justice Research Project, in which she managed a team of student researchers. In addition, much of her work experience is in this area, from work with Planned Parenthood before law school to an externship with the ACLU of Northern California in which she focused on reproductive health access for incarcerated women.

I understand from Anna that her long terms goals include academia, an aspiration I very much encourage. In the short to medium term, Anna's focus is on reproductive rights in the South, a geographical commitment that reflects her years growing up there. She is currently serving as a legal fellow at the National Women's Law Center, in their Reproductive Rights and Health unit. She focuses on state abortion policies as well as on developing recommendations for legislators, with special attention to West Virginia, Florida, and Louisiana, further deepening her interest in the South.

Every year, there are one or two students who stand out as game changers. In her cohort, it's Anna. Simply put, Anna exemplifies the very best of Berkeley Law. I urge you to engage her as a law clerk.

If I may answer any further questions or be of any further assistance, please do not hesitate to get in touch with me.

Sincerely,

Ian F. Haney López

Ian Haney-Lopez - ihl@law.berkeley.edu

Chief Justice Earl Warren Professor of Public Law

Ian Haney-Lopez - ihl@law.berkeley.edu

The following is an excerpt from a note written for submission to a law review journal. It is currently being reviewed for publication and does not reflect updated caselaw since mid-2020.

Culture War Politics & the Rise of Religious Exemptions against Reproductive Health Access:
Pitting Patients Against Religious Freedom is A Losing Game

Abstract: Recent cases and political movements have severely limited reproductive healthcare access for patients across the U.S., and especially women and LGBTQ individuals. These intrusions to bodily autonomy have been championed under the guise of religious freedom. In this Note, I show the range of ways in which religious exemptions are growing and impinging on the legal rights of women and LGBTQ people. I argue that while cases like *Hobby Lobby* undermine the original intent of religious freedom laws, much of the political rhetoric remains unchanged since *Roe*. The ever-increasing political polarization between religious freedom and gender rights is another symptom of anti-abortion and anti-LGBT rights activists' weaponizing of culture war politics to continue to pit patients against providers. To combat this systemic problem, I recommend several policy reforms that can revert religious freedom laws to their original intent and warn legal activists against proactive litigation in the era of Trump-appointed judges. Importantly, I present a novel survey of state-level religious freedom statutes and offer a roadmap for legislators to protect access to reproductive healthcare in their states.

Introduction

This past January, the Supreme Court announced that it would hear *Trump v. Pennsylvania* and *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*.¹ These two consolidated cases will pick up where *Hobby Lobby* left off, and, for better or for worse, announce the constitutionality of the Trump administration's rules allowing employers and hospitals to deny birth control coverage to employees and patients.²

In recent years, healthcare-delivery policy and law has increasingly supported religious rights. Fueling employers' ability to seemingly trample on patients' right to equal treatment is the growing support for religious refusals, also known as conscience clauses, in healthcare delivery policy and law. Since the advent of *Roe v. Wade* and expanding access to reproductive healthcare, both state and federal legislatures have authorized religious refusals.³ Conscience clauses were first drafted to be bipartisan and pro-life/pro-choice compromises to protect access to healthcare while protecting individuals' religious rights.⁴ However, their expanding reach, especially in the context of insurance, has sparked debate.

But religiously affiliated employers are not the only ones to blame. Increasingly, religiously affiliated hospitals and individual practitioners have cited religious exemptions to deny patients their access to reproductive healthcare. Taken together, patients are now losing insurance coverage and access to equal healthcare treatment.

¹ See Ian Millhiser, *The coming Supreme Court showdown over birth control*, VOX NEWS (January 17, 2020), <https://www.vox.com/2020/1/14/21059931/supreme-court-birth-control-religious-liberty-pennsylvania-little-sisters> (last visited February 3, 2020).

² *Id.*

³ See Jed Miller, *The Unconscionability of Conscience Clauses*, 16 HEALTH MATRIX 237, 242 (2006).

⁴ See Sara Dubow, "A Constitutional Right Rendered Utterly Meaningless": Religious Exemptions and Reproductive Politics, 1973-2014, 27 J. OF POL. HIST. 1, 5 (2015).

These compounding barriers are born out in everyday people's lives. Evan Minton, a 37-year-old man scheduled a hysterectomy at Mercy San Juan Medical Center in Carmichael, California prior to his sex reassignment surgery.⁵ Mercy San Juan was one of the thirty-nine hospitals owned by Dignity Health, a Catholic hospital network. During a routing phone call with a nurse two days before his surgery, he mentioned that he was transgender, and he used the pronouns "he/him/his." The next day the hospital called him claiming that they considered his hysterectomy sterilization and had cancelled the surgery. Pending litigation filed by the ACLU has still left Mr. Minton without any answers. Elizabeth Gill, senior attorney at the ACLU of Northern California, argued that section 1557 of the ACA expressly protects against anti-transgender discrimination in any hospital that receives federal funding.⁶ Objecting to this argument, the USCCB responded that "[they] believe, as do many health care providers, that medical and surgical interventions that attempt to alter one's sex are, in fact, detrimental to patients. Such interventions are not properly viewed as health care because they do not cure or prevent disease or illness."⁷ As of this writing, the Court of Appeals ruled that Minton's complaint against the hospital did in fact violate his right to "full and equal access to health care treatment," but both the passage of time and the fact that Minton was eventually able to attain his hysterectomy mitigated his claim to damages.⁸

It is no coincidence that most of the stories involving harmful refusals have taken place in Catholic-affiliated hospitals. In a 2016 report the by ACLU and MergerWatch, it was estimated that 1 in 6 hospitals in the U.S. is affiliated with a Catholic network, and that proportion is larger for rural communities.⁹ That same year, 45 communities (in a survey of communities which had one hospital in a 35 mile radius) only had access to Catholic hospitals for almost all of their care.¹⁰ From 2001 to 2016, Catholic-affiliated hospitals have grown by 22 percent, as the total of U.S. hospitals have shrunk in a push to merge secular hospitals with Catholic hospitals.¹¹ The Patient Protection and Affordable Care Act (ACA) may have intentionally encouraged the rise in hospital mergers in an attempt to reduce overall costs.¹² These mergers can only benefit from the ACA's perks if the entities show that their consolidation "will meaningfully integrate the two healthcare entities," thus enabling Catholic hospitals to push their set of beliefs to previously secular entities.¹³ Throughout this Note, much of the focus will be on Catholic hospitals, which

⁵ See Katie Hafner, *As Catholic Hospitals Expand, So Do Limits on Some Procedures*, NEW YORK TIMES (August 10, 2018), <https://www.nytimes.com/2018/08/10/health/catholic-hospitals-procedures.html> (last visited August 31, 2019).

⁶ See Amy Littlefield, *Catholic Hospital Denies Transgender Man a Hysterectomy on Religious Grounds*, REWIRE NEWS (Aug. 31, 2016), <https://rewire.news/article/2016/08/31/catholic-hospital-denies-transgender-man-hysterectomy-on-religious-grounds/> (last visited August 31, 2019).

⁷ *Id.*

⁸ See *Minton v. Dignity Health*, 39 Cal.App.5th 1155 (2019).

⁹ See Julia Kaye, Brigitte Amiri, Louise Melling & Jennifer Dalven, *Health Care Denied: Patients and Physicians Speak Out about Catholic Hospitals and the Threat to Women's Health and Lives*, AMERICAN CIVIL LIBERTIES UNION (May 2016), https://www.aclu.org/sites/default/files/field_document/healthcaredenied.pdf (last visited August 31, 2019) [*hereinafter Health Care Denied*].

¹⁰ See Anna Maria Bary-Jester & Amelia Thomson-DeVaux, *How Catholic Bishops Are Shaping Health Care in Rural America*, FIVETHIRTYEIGHT (Jul. 25 2018), <https://fivethirtyeight.com/features/how-catholic-bishops-are-shaping-health-care-in-rural-america/#fn-1> (last visited August 31, 2019).

¹¹ *Id.*

¹² See Elizabeth B. Deutsch, *Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act's Nondiscrimination Mandate*, YALE L. J. 2470, 2484 (2015).

¹³ *Id.* at 2485.

dominate the religiously-affiliated hospitals landscape, but other religious denominations, like Adventist, have also contributed the shrinking number of secular hospitals.

Foregrounding this debate is the U.S.'s history of culture war politics and the ongoing rise of backlash constitutional jurisprudence against reproductive healthcare access. Cultural war politics, often described as the increasing hostility lead by religious movements against "counterculture" issues, and include abortion and LGBTQ issues.¹⁴ The confluence of religious conservative groups' opposition to practices that separate sex from procreating, like same-sex marriage or abortion, has brought classic culture war politics into the present, albeit not always following the culture war narrative.¹⁵ Cases like *Hobby Lobby*¹⁶ and *Masterpiece Cakeshop*¹⁷ are prime examples of modern-day culture war politics, where morality arguments are used to justify the restriction of unwanted departures from the traditional family model. While these cases may not touch on healthcare access specifically, they add to a growing body of constitutional jurisprudence that is emboldening state and federal action against marginalized communities' access to reproductive healthcare. When employers, businesses, and hospitals strengthen religious freedom exemptions, they can decide who needs services and what type of care they will provide. Healthcare is not accessible without a hospital or clinic, healthcare professionals, and insurance program that will cover the care people need.

In this Note, I argue that when religious freedom is balanced against patients' right to healthcare, in particular reproductive healthcare services, patients are increasingly losing. In order to talk about these vital health services, it is important to define what I am calling reproductive healthcare services. Reproductive healthcare does not just include access to abortion or contraception, but also gender-affirming care, birth and delivery, STI screening, and many other services that affect bodily autonomy and sexual health. Throughout this Note I will use examples of different reproductive choices which are all affected by religious refusals, in varying degrees. Of course, these examples will not be exhaustive and are inherently limited by available caselaw and media attention, which often privilege the reproductive healthcare of cisgender, white, and affluent women. Reproductive justice (RJ), which is a framework created by Black women who were dissatisfied with the women's rights movement of the 1990s, invites scholars and activists to use intersectionality as a starting point – recognizing that different communities have varying and intersecting reproductive health needs. Sistersong, one of the leading RJ organizations, defines reproductive justice as the "conditions of liberation that will exist when all people have the power and resources necessary to make their own decisions about their bodies, health, gender, sexuality, relationships, families, and communities, to create and choose their families, and to reproduce their communities as a whole."¹⁸ Using RJ as a framework allows for an intersectional analysis of religious refusals, considering both healthcare

¹⁴ See Irene Taviss Thomson, *Culture Wars and Enduring American Dilemmas*, University of Michigan Press, at 3 (2010).

¹⁵ Douglas Nejaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L. J. 2516, 2546 (2015).

¹⁶ *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

¹⁷ *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Com'n*, 138 S. Ct. 1719 (2018).

¹⁸ See Loretta Ross, Lynn Roberts, Erika Derkas, Whitney Peoples, & Pamela Bridgewater, RADICAL REPRODUCTIVE JUSTICE: FOUNDATION, THEORY, PRACTICE, CRITIQUE (2017), "Introduction" pp. 11-31, 14 (quoting SisterLove, Inc., *Intersections at the Grassroots: A Reproductive Justice Analysis of Atlanta's HIV Epidemic* (Atlanta: 2017) 6, http://www.sisterlove.org/wp-content/uploads/2017/01/Executive-Summary_SisterLoveInc_Jan2017Report.pdf).

access (insurance and hospital denials) and specific services (abortions, hysterectomies, and gender-affirming care, for example).

RJ specifically contends that culture war politics are often at the root of reproductive oppression.¹⁹ Tracing the history of religious refusals and conscience exemption clauses, we can see how this new era of Department of Health and Human Services (HHS) mandates and backdoor settlement agreements to violate the ACA are a stark departure from their original intent. While other scholars have focused on religious refusals when it comes to individual practitioners or hospitals, few have focused on the intersecting effect of both hospitals that follow religious directives prohibiting certain reproductive healthcare and employers who deny reproductive health coverage citing religious objections. And even fewer have called attention to the underlying premise fueling expanding religious exemptions: culture war politics. Foregrounding this shift, I argue that culture war politics in particular, and an increasingly divided political discourse, is fast-tracking this already high-speed moving train. In Part I, I trace the origins of culture war politics and how they gave rise to conscience clauses. Part II focuses on the protections of the ACA, especially when it comes to reproductive healthcare, and two major threats to the ACA's coverage: hospital mergers and employers' ability to deny contraceptive coverage. Part III analyzes the Court's opinion on *Hobby Lobby*, contextualizing the expanding reach of religious exemptions under the continuation culture war politics. In Part IV, I then turn to how the Trump administration's rule changes, judicial appointments, and commitment to culture war politics will enshrine many of these limits to access to reproductive healthcare for generations to come. To counter these federal policies and Court decisions, many states have passed comprehensive protections for employees and patients, which I will explore in Part V. In particular, this Part will provide a novel survey of current religious exemption laws in the state level and how they interact statewide protections. Finally, Part VI will call for action on the state level – urging lawmakers and movement leaders to strategize around state protections against the ever-evolving threat of culture war politics.

I. Culture war politics and the rise of conscience clauses.

[Omitted for brevity.]

II. ACA Protections and Failures: Patients can be discriminated with moral impunity.

In this political backdrop, the Obama administration introduced one of the largest changes to the healthcare delivery system in the United States: the Patient Protection and Affordable Care Act (ACA). Importantly, the ACA guarantees coverage of FDA-approved contraception for all people, regardless of their insurer. Since the ACA's introduction, Republicans and more extremist conservative groups have tried to halt the ACA from reaching the public. Linking the ACA to Obama's presidency through re-branding it as "ObamaCare" served as a rhetorical tool for the Right to oppose the ACA. Through ad campaigns, the Right was able to shape American's opinion on the ACA, and polls have shown that less than 50% of Americans support the ACA.²⁰ During the 2014 mid-term election, 94% of the \$445 million spent on TV campaigns were spent on negative ad messages about the ACA.²¹

¹⁹ See *id.* at 20.

²⁰ See James E. Dalen, Keith Waterbrook & Joseph S. Alpert, *Why do so Many Americans Oppose the Affordable Care Act?* 128 AM. J. MED. 807 (August 2015).

²¹ *Id.* at 809.

The ACA, like many other federal programs, included limited exceptions for religious employers and healthcare providers. Specifically, nonprofit religious organizations are exempt from the ACA's requirement that employer-provided insurance plans cover preventative services—including many types of contraception—without co-payments. But that exemption is quickly expanding.²² To counter some of these harms, the ACA established some patient protections that scholars believe could curtail recent expansion of religious refusals. Among them is Section 1557 of the ACA.²³ However, as I explain below, Section 1557 has not been an effective remedy for many patients and is especially losing its teeth in the face of the Trump administration's HHS rule changes and executive orders. To make matters worse, the ACA has encouraged the mergers of hospital networks, which has accelerated the rate of religious networks acquiring previously secular institutions. Taken together, the ACA has failed to protect patients against religious exemptions to care.

A. Section 1557: The Healthcare Rights Act and Legal Challenges

Section 1557 of the ACA is the first of its kind to provide individuals a private right of action in the healthcare setting.²⁴ Under this Section, individuals have a right to be free from discrimination in “any health program or activity...which is receiving Federal financial assistance.”²⁵ This section broadly covers all health programs, including hospitals, pharmacies, and insurance providers.²⁶

Section 1557 bases its definition of sex discrimination on Title VII and IX.²⁷ Doing so, it expands the definition of sex discrimination to include discrimination based on pregnancy, gender identity, and sexuality.²⁸ The ACA also authorizes HHS to issue guidance in implementation the nondiscrimination requirements of the section.²⁹ In May 2016, HHS introduced a final rule on Section 1557 that clarified that discrimination on the basis of sex includes discrimination based on gender identity.³⁰ Further, barring a medical reason, a medical service that is offered to non-transgender individuals must also be offered to transgender patients. For example, if an insurance company covers hormone therapy for menopausal women, it must also provide hormone therapy for transition-related care.³¹

Importantly, scholars have argued that Section 1557 provides antidiscrimination protection greater than that offered by the Equal Protection Clause, since it includes Title IX's definition.³² For one, Title IX explicitly defines discrimination on the basis of sex as including pregnancy.³³ In contrast, the Supreme Court has ruled that “unfavorable” treatment of pregnant people did not necessarily meet the discrimination threshold required by the Equal Protection Clause.³⁴ Therefore, Section 1557 creates more robust protections for any person capable of

²² See Dubow, *supra* note 2, at 21.

²³ See generally Deutsch, *supra* note 6; Florczak, *supra* note 45.

²⁴ Florczak, *supra* note 45, at 442.

²⁵ *Id.* (quoting 42 U.S.C. § 18116(a) (2010)).

²⁶ See Deutsch, *supra* note 6, at 2491.

²⁷ See *id.* at 2490.

²⁸ See *id.* at 2493.

²⁹ 42 U.S.C. § 18116(c).

³⁰ See Florczak, *supra* note 45, at 443.

³¹ See *id.* at 444.

³² See Deutsch, *supra* note 6 at 2494.

³³ *Id.*

³⁴ *Id.* (quoting *Geduldig v. Aiello*, 417 US 484, 494 (1974)).

becoming pregnant, and especially protects people from being refused services or information about their reproductive health.³⁵

Despite its lofty goals, Section 1557 has recently come under fire. In *Franciscan Alliance v. Burwell*, Texas, several other states, and three private healthcare organizations challenged Section 1557's recognition of gender identity discrimination under the umbrella of sex discrimination.³⁶ Federal district court Judge O'Connor agreed with the claimants' position that complying with 1557 conflicted with their rights under the RFRA and granted a nation-wide injunction to prevent Section 1557 from going into full effect.³⁷ In his opinion, Judge O'Connor reasoned that since Section 1557 adopted Title IX's language, it was strictly referring to biological sex and not "an internal sense of gender identity."³⁸ Further, the plaintiffs in this case are seeking an order allowing them to discriminate against individuals who seek reproductive healthcare, like abortion.³⁹ As of this writing, the case is pending appeal to the Fifth Circuit.

It is unclear what section 1557's future holds. It is important to note that the plaintiffs in *Franciscan Alliance* were not "closely held, for-profit organizations" like Hobby Lobby.⁴⁰ Instead, the plaintiffs are Catholic hospital systems and a faith-based group of providers.⁴¹ As I will show in the discussion of *Hobby Lobby*, the expansion of religious refusals to large, for-profit health systems like Franciscan Alliance could pave the way for other for-profit health care corporations to bring similar challenges,⁴² chipping away at access to reproductive healthcare.

This past summer, HHS proposed substantial revisions to Section 1557 that would go beyond the relief requested or injunction in *Franciscan Alliance*.⁴³ Importantly the proposed rule would eliminate the prohibition based on gender identity, adopt blanket abortion and religious freedom exemptions for health care providers, and eliminate the provisions that grants private individuals to challenge alleged violations of the Health Care Rights Act.⁴⁴ Further, while the current ACA applies broadly to health programs and activities which receive federal funding, including insurances outside of the ACA's Marketplace, the new rule would narrow the reach of the regulations by only covering specific activities that receive federal funding, but not other operations, of health insurers that are not "principally engaged in the business of providing health care."⁴⁵ Thus, many insurers outside of the Marketplace would no longer be subject to the regulations, allowing private insurances to exclude coverage for reproductive healthcare

³⁵ See Deutsch, *supra* note 6, at 2495.

³⁶ See Florczak, *supra* note 45, at 455.

³⁷ See *id.*

³⁸ See *id.* at 456.

³⁹ See Brigitte Amiri, *Texas Claims it 'Zelously Protects the Physician-Patient Relationship.'* *Tell That to Texas Women Trying to Access Abortion*, ACLU (Sep. 16, 2016), <https://www.aclu.org/blog/reproductive-freedom/texas-claims-it-zealously-protects-physician-patient-relationship-tell>.

⁴⁰ See Florczak, *supra* note 45, at 456.

⁴¹ See *id.*

⁴² See *id.* at 457.

⁴³ See MaryBeth Musumeci, Jennifer Kates, Lindsey Dawson, Alina Salganicoff, Lauri Sobel, and Samantha Artiga, *HHS's Proposed Changes to Non-Discrimination Regulations Under ACA Section 1557*, KAISER FAM. FOUND. (July 1, 2019), <https://www.kff.org/disparities-policy/issue-brief/hhss-proposed-changes-to-non-discrimination-regulations-under-aca-section-1557/> (last visited August 29, 2019).

⁴⁴ Nondiscrimination in Health and Health Education Programs or Activities, 84 F.R. 27846-01.

⁴⁵ 84 F.R. 27860.

otherwise guaranteed by the ACA.⁴⁶ Additionally, Section 1557 regulations would no longer apply to all HHS-administered programs.⁴⁷

B. Hospital mergers
[Omitted for brevity.]

III. Constitutional Backlash of *Hobby Lobby*: Employers no longer have to follow ACA mandates.

In *Burwell v. Hobby Lobby* (2014), Justice Alito expressed the opinion of the Court that allowing for-profit businesses to deny contraceptive coverage to their employees would have “precisely zero” effect on their employees.⁴⁸ Yet despite Justices Alito and Kennedy’s assurances that the holding was narrow, *Hobby Lobby* represents a setback for anyone accessing reproductive health services, especially women and LGBT people. In the coming years, especially with the shifting make-up of the Court, the real harms of *Hobby Lobby* remain to be seen.

Hobby Lobby was a consolidation of cases brought by Hobby Lobby Stores and Conestoga Wood Specialties, both effectively controlled by families with stated purposes to commit their businesses under their respective religious beliefs.⁴⁹ At the time, Conestoga had 950 employees and Hobby Lobby had more than 13,000 employees.⁵⁰ Both companies sued HHS in order to challenge the contraceptive mandate using RFRA and the Free Exercise Clause.⁵¹ Under RFRA, HHS had to prove a compelling governmental interest and show that the mandate was the least restrictive means to carry out that interest.

In his opinion, Justice Alito made four important holdings. First, he claimed that “for-profit closely held corporations” are capable of holding religious beliefs.⁵² Justice Alito then dismissed the government’s interest in gender equality and public health, citing the government’s unwillingness to pay for coverage in question as proof that this interest was not important to the government.⁵³ Then, the Court insisted on a stringent reading of the least-restrictive-means test, relying on *City of Boerne*.⁵⁴ Lastly, and arguably most importantly, Justice Alito implied that claims based on complicity, i.e. claims that are not directly related to the “sinful” behavior, but are tangentially related to their completion, warrant religious protection.⁵⁵

While RFRA applies to “a person’s exercise of religion,” and had not been previously been applied to corporation, the Court expanded the definition of “persons” to include corporations.⁵⁶ Doing so, Alito focused on a “legal fiction” insisting that corporations cannot act separately from their owners.⁵⁷ Moving past this issue, the Court then tackled the issue of for-

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Hobby Lobby*, at 2760.

⁴⁹ *Id.* at 2764, 2766.

⁵⁰ *Id.*

⁵¹ *Id.* at 2766.

⁵² *Id.* at 2768.

⁵³ *Id.* at 2779–81.

⁵⁴ *Id.* at 2780.

⁵⁵ *Id.* at 2778–79.

⁵⁶ *Id.* at 2768.

⁵⁷ *Id.*

profit corporations claiming religious exemptions that are usually reserved for religious non-profits. In his opinion, Alito again relied on another legal fiction: creating the ambiguous category of “for-profit closely held corporation[s].”⁵⁸ Even conceding the leap that corporations should be treated as people since they are made up of “human beings,”⁵⁹ corporations cannot reasonably represent every employee’s and their families’ set of beliefs.⁶⁰

RFRA requires that some compelling government interest is furthered through the proposed action. While Justice Alito admitted that “public health” and “gender equality” were compelling interests, his flippant dismissal of these interests colored the rest of his opinion.⁶¹ Alito mocked HHS’s claim of a strong interest with women’s equality by asking that if providing all women contraceptives was “a Government interest of the highest order,” then why was it not required by the RFRA to “pay *anything* in order to achieve this important goal.”⁶² Justice Alito relied on *Gonzales v. O Centro Espirata Beneficent Uniao Do Vegetal* (2006)’s interpretation of the RFRA, which requires the government to demonstrate the compelling interest in the context of the “sincere exercise of religion [that] is being substantially burdened.”⁶³ Under this guidance, the Court reasoned the government’s interest is “very broadly framed.”⁶⁴ Instead of delving into the merits of HHS’ interests, Justice Alito assumed there is a compelling interest in order to move on to what he believed was more critical – the least-restrictive-means test.⁶⁵ However, in glossing over the government’s compelling interest in women’s equality, Justice Alito ignored how access to reproductive health is vital in women’s equality in both the workplace and society. In the end, Justice Alito created a dangerous precedent for dismissing future interests in women’s equality.

The Court insisted on a stringent reading of the least-restrictive-means test, relying on *City of Boerne*.⁶⁶ As noted above, and explained in Justice Ginsburg’s dissent, the least-restrictive-means test should be no more or less stringent than in pre-*Smith* jurisprudence.⁶⁷ Under the misguided use of this overly stringent test, the Court made the second mistake of assuming a substantial burden on Hobby Lobby and Conostoga’s exercise of religion instead of appropriately questioning it. Justice Alito further claimed that HHS had failed the least-restrictive-means standard because, in the Court’s view, HHS could have simply covered the contraceptives itself.⁶⁸

⁵⁸ *Id.* at 2775

⁵⁹ While it is true that Constitutional doctrine has considered corporations people for similar reasons, here context is important. See *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). The Court is not considering the corporations right to free speech, but the corporation’s right to refuse medical coverage because of its moral beliefs. In both cases it is dubious as to how a corporation can claim to represent the political or religious beliefs of its employees, but, in the insurance context, third-party harms, like inability to access reproductive health, is more poignant. As Justice Stevens reminded the court in *Citizens United*, corporations have “no consciences, no beliefs, no feelings, no thoughts, no desires.” *Citizens United*, at 466.

⁶⁰ *Hobby Lobby*, 134 S. Ct. at 2786, (“In the court’s view, RFRA demands accommodation of a for-profit corporation’s religious beliefs no matter the impact that accommodation may have on third parties who not share the corporation owners religious faith – in these cases, thousands of women employed by Hobby Lobby and Conestoga or dependents of persons those corporations employ.” *Id.*)

⁶¹ *Id.* at 2779.

⁶² *Hobby Lobby*, 134 S. Ct. at 2781.

⁶³ *Id.* at 2779 (quoting *O Centro*, 546 US 418 at 430-31).

⁶⁴ *Id.* at 2780.

⁶⁵ *Id.*

⁶⁶ *Id.* at 2781 (“The least-restrictive-means standard is exceptionally demanding.” *Id.*).

⁶⁷ *Id.* at 2791.

⁶⁸ *Id.* at 2781.

While it is true that HHS has already made exceptions for non-profit organizations, religious nonprofit organizations are designed to serve the specific purpose of carrying out their religious beliefs. In contrast, for-profit companies are, by definition, interested in making a profit, albeit their owners may make their personal decisions about how to run their businesses according to their personal beliefs. For-profit companies have chosen to join the marketplace, making themselves open to a public with varied religious and moral views. Requiring their employees to follow the company's religious beliefs, even indirectly through refusing to cover certain health services, gives for-profit companies organizational religious protection that should be reserved for non-profits. The Court allows for-profit companies to push personal convictions on their employees, who then will carry the additional burden of sifting through government bureaucracy to get the coverage they need, not to mention the dignitary harm caused by knowing that your employer will not cover your reproductive healthcare.

The Court relied on Hobby Lobby's and Conestoga's statement of belief that providing certain types of contraception makes them complicit in the immoral act of ending the life of an embryo.⁶⁹ The Court did not question the burden on the Green and Hanh families, but takes their tenuous connection between providing coverage and assisting women access contraception as a substantial burden in itself. As Justice Ginsburg pointed out in her dissent, this logic entirely dismisses people's decisional autonomy, which breaks the causal link between providing insurance coverage and using contraception.⁷⁰ Some organizations have gone as far as to challenge the act of filling out a form for their religious refusal, insisting that providing documentation makes them complicit in providing care they deem morally wrong.⁷¹ While the challenge to the form is pending appeal, *Hobby Lobby* provides no real limit to how much credit the Court can give to tenuous complicity in another's actions.⁷² However, eight of the nine appeals courts which have considered this issue have ruled that filling out this form is not a substantial burden on the employer's religious beliefs.⁷³

The *Hobby Lobby* decision is a classic example of culture war politics at work. As Professor Robin West notes, little academic literature has focused on the heteronormative morality foregrounding Hobby Lobby.⁷⁴ The case is a far deviation from the original purpose of RFRA, which was enacted to protect minority religious individuals practicing unfamiliar traditions. *Hobby Lobby* dramatically departs from traditional understanding of religious freedom by ignoring the harms of denying thousands of employees their privacy rights, assuming companies hold religious beliefs, and finding the ACA mandate significantly harms employers who do not wish to follow it.⁷⁵

The Court is not alone, however, in expanding the reach of religious freedoms. As we have seen from the start of Trump's presidency, HHS and other agencies have doubled down on enacting culture war politics regulations, cementing the Court's misguided interpretation of the

⁶⁹ *Id.* at 2798.

⁷⁰ *Id.* at 2999.

⁷¹ See Nejaime & Siegel, *supra* note 12, at 2531 (quoting *Wheaton v. Burwell*, 134 S. Ct. 2806, 2807 (2014)).

⁷² See *id.*

⁷³ See *Challenges to the Federal Contraceptive Coverage Rule*, ACLU, <https://www.aclu.org/challenges-federal-contraceptive-coverage-rule>.

⁷⁴ See Robin West, *Hobby Lobby, Birth Control, and Our Ongoing Cultural Wars: Pleasure and Desire in the Crossfires*, 26 HEALTH MATRIX 71 (2016).

⁷⁵ See, e.g., Andrew Koppelman, *Masterpiece Cakeshop and how "religious liberty" became so toxic*, VOX (Dec. 6, 2017), <https://www.vox.com/the-big-idea/2017/12/6/16741840/religious-liberty-history-law-masterpiece-cakeshop> (last visited August 30, 2019).

RFRA and other civil rights laws. Under this context, for-profit religious employers and hospitals are emboldened to continue discriminating against LGBT individuals and women.

IV. The Trump Administration and the future of religious exemptions.

[Omitted for brevity.]

V. Religious exemptions on the state level: State RFRA's and Notification Requirements converge to deny employee insurance benefits.

[Omitted for brevity.]

Conclusion

As outlined in the outset of this Note, there are several policy reforms that could alleviate some of this harm. First, state and federal policy should clarify and restrict the circumstances under which medical providers, insurers, and any health entity can deny care for religious or moral convictions.⁷⁶ Next, those providers that have conscience-based health care refusals should be required to notify their patients or members about their limitations and offer referrals to other providers.⁷⁷ Additionally, state governments should strengthen oversight and protections of hospital mergers to prevent the loss of reproductive health care.⁷⁸

Section 1557 may not be as politically useful for patients as once thought. With the nomination of several Trump judges in the past couple of years, claimants have diminishing options when it comes to judges that will likely interpret the Health Care Rights Act to protect their rights. More research needs to be done on a state-by-state, jurisdiction-to-jurisdiction basis to determine what judicial or extralegal avenues patients and activists should pursue.

State and federal versions of RFRA should be amended to reflect its original intent. Recently, Congressional Democrats reintroduced a bill to reduce the unintended harms of RFRA. The Do No Harm Act (H.R. 3222) provides that RFRA “should be interpreted to authorize an exemption from generally applicable law that imposes the religious views, habits, or practices of one party upon another.”⁷⁹ The act would also ensure that RFRA can only be raised if the government is a party in a judicial proceeding.⁸⁰ Importantly, the scope of “meaningful harm” to third parties would include dignitary harm.⁸¹ First introduced in 2017 following the *Hobby Lobby* decision, the act has received wide support from civil rights organizations, including the ACLU, AIDS United, Center for American Progress, Lambda Legal, and the National Women’s Law Center.⁸² This type of federal reform may not be possible under the current administration, but state actors can reform their local RFRA’s to reflect the protections envisioned in the Do No

⁷⁶ See Kira Shepherd, Elizabeth Reiner Platt, Katherine Franke & Elizabeth Boylan, *Bearing Faith: The Limits of Catholic Health Care for Women of Color*, Public Rights/Private Conscience Project, <https://www.law.columbia.edu/sites/default/files/microsites/gender-sexuality/PRPCP/bearingfaith.pdf>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ H.R. 3222, 115th Cong. (2019).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See Gwen Aviles, *Congressional Democrats reintroduce the Do No Harm Act*, NBC NEWS (March 1, 2019), <https://www.nbcnews.com/feature/nbc-out/congressional-democrats-reintroduce-do-no-harm-act-n978101> (last visited August 31, 2019).

Harm Act. As outlined above, there are several states that are in favorable political positions to enact RFRA reform, but more in-depth research, especially with key stakeholders and activists already on the ground, is needed.

However, real, lasting change follows shifts in culture. Activists and scholars need to call this what it is: a continuation of culture war politics. It's not enough to treat this as a policy or legal issue. Especially at a time when culture is so clearly shaping policy and law, we need to take serious steps to address the cultural forces at play. To dismantle culture war politics, activists and leaders must coordinate efforts to: (1) start naming the issue as culture war politics, (2) have frank discussions about the sexist and bigoted rationales for restricting reproductive health, and (3) build coalitions that expose and combat culture war politics through direct action and lasting cultural and policy change.

Importantly, there needs to be more research on how to combat culture war politics through communications and policy efforts. This political moment will cause irrevocable harm to marginalized communities, especially marginalized communities who may not have that many options to begin with. We must remember that culture war politics has existed for a long time, and solutions that do not directly address and dismantle culture war politics will simply revert us back to the status quo – which wasn't that great either.

Applicant Details

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Middle Initial	R L											
Last Name	Roellke											
Citizenship Status	U. S. Citizen											
Email Address	jon.roellke@richmond.edu											
Address	<table> <tr> <td>Address</td> </tr> <tr> <td>Street</td> </tr> <tr> <td>514 South Sheppard Street</td> </tr> <tr> <td>City</td> </tr> <tr> <td>Richmond</td> </tr> <tr> <td>State/Territory</td> </tr> <tr> <td>Virginia</td> </tr> <tr> <td>Zip</td> </tr> <tr> <td>23221</td> </tr> <tr> <td>Country</td> </tr> <tr> <td>United States</td> </tr> </table>	Address	Street	514 South Sheppard Street	City	Richmond	State/Territory	Virginia	Zip	23221	Country	United States
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Virginia												
Zip												
23221												
Country												
United States												
Contact Phone Number	2029069720											

Applicant Education

BA/BS From	University of Virginia
Date of BA/BS	May 2017
JD/LLB From	University of Richmond School of Law http://www.nalplawsonline.org/content/OrganizationalSnapshots/OrgSnapshot_235.pdf
Date of JD/LLB	May 21, 2020
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	University of Richmond Law Review
Moot Court Experience	Yes
Moot Court Name(s)	2018 University of Richmond Carrico Moot Court Competition Winner 2019 Hassell Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Campbell, Jud
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References

Robin Leiter-White
Senior Managing Attorney
Central Virginia Legal Aid Society
434-327-1444

This applicant has certified that all data entered in this profile and any application documents are true and correct.

514 S. Sheppard St.
Richmond, Virginia 23221

September 13, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am writing to apply for a clerkship in your chambers for the 2021-2022 term following my clerkship with Chief Judge Robbins on the Chesterfield Circuit Court in Virginia. I graduated in the top 10% of my class at the University of Richmond School of Law where I served on the executive board of the University of Richmond Law Review. I am eager to remain in the Richmond area following my clerkship and working in the fast-paced Eastern District of Virginia would be a tremendous growth opportunity.

My current role has prepared me well for the challenges posed by working in the "rocket docket." Chesterfield Circuit Court is among the busiest trial courts in the Commonwealth and is currently operating with a one-judge vacancy. While the Eastern District is certainly more demanding, my position has given me valuable time and docket management experience that would assist me in a clerkship in your chambers.

Please let me know if I can provide any additional information. I can be reached by phone at (202)-906-9720, or by email at jon.roellke@richmond.edu. Thank you very much for considering my application.

Respectfully,

Jon R.L. Roellke

JON R.L. ROELLKE

514 S. Sheppard St.
 Richmond, VA 23221
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 202.906.9720

EDUCATION

University of Richmond School of Law

Richmond, VA

Juris Doctor

May 2020

- GPA: 3.80 (Top 10%), Summa Cum Laude, Order of the Coif
- Pro Bono Award
- Senior Notes & Comments Editor, Executive Board, *University of Richmond Law Review*
- 2019 Hassell Moot Court Competition Semi-Finalist
- 2018 Carrico Moot Court Competition Winner
- 2018 Trial Advocacy Board Competition Semi-Finalist

University of Virginia

Charlottesville, VA

Bachelor of Arts, Double Major, in Foreign Affairs and History

May 2017

- GPA: 3.45
- Resident Advisor for Kellogg and Gibbons Dormitories
- Presidential Precinct Eastern and Southern Africa Contractor

EXPERIENCE

The Honorable Edward Robbins, Jr., Chesterfield Circuit Court

Chesterfield, VA

Law Clerk

2020–2021 Term

- Assist chief judge of state trial court in managing the Court's civil docket. Prepare memoranda and orders on civil matters.
- Operate as the in-court clerk for all civil matters.
- Communicate with counsel on scheduling and procedural requirements.

Office of the Federal Public Defender-Western District of Virginia

Charlottesville, VA

Law Student Intern

Summer 2019

- Researched legal issues relating to evidence, sentencing law, and criminal procedure; wrote draft motions and memoranda on those issues.
- Appeared in petty offense cases with supervision from admitted attorney.

Central Virginia Legal Aid Society

Charlottesville, VA

Law Student Intern-Virginia Law Foundation Fellow

Summer 2018

- Researched and drafted, motions, proposed orders, memoranda, and client communications on a variety of legal issues, including housing and consumer law.

Jon Roellke
University of Richmond School of Law
Cumulative GPA: 3.80

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Clark Williams	B+	4	
Contracts	David Epstein	A-	4	
Legal Analysis and Writing I	Rachel Suddarth	B	2	
Legal Research I	Jason Zarin	S	1	Year-long course with grade at end of year
Torts	Noah Sachs	A	4	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Jud Campbell	A	4	
Criminal Law	John Douglas	A-	3	
Legal Analysis and Writing II	Rachel Suddarth	B+	2	
Legal Research II	Jason Zarin	B+	1	
Legislation and Regulation	Kimberly Robinson	A	3	
Property	Chris Cotropia	A	4	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Associations	David Epstein	P	4	"P" grade signifies that the course was taken Pass/Fail
Civil Rights Litigation	Jud Campbell	A	3	
Evidence	Corinna Lain	A	4	
Lawyering Skills III	David Harbach & Chris Jones	A-	2	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Appellate Advocacy	Paul Gill	B+	2	
Constitutional Law II: Individual Liberties	Jud Campbell	A	3	
Criminal Procedure: Investigation	Kevin Woodson	A-	3	
Professional Responsibility	Kevin Woodson	A	3	
Voting Rights	Henry Chambers	A-	3	

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Civil Litigation	John Preis	A	3
Criminal Procedure Adjudication	Erin Collins	A	3
Federal Income Taxation	Daniel Schaffa	A	4
White Collar Crime	Henry Chambers	A	3

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Antitrust	Kristen Osenga	CR	3	
Core Commercial Concepts	David Epstein	CR	3	
Corporate Taxation	David Hasen	CR	3	
Introduction to Business	Jonathan Whitaker	CR	2	
Wills, Trusts, & Estates	Allison Tait	CR	4	
Writing for Clerks	Mark Thomson & Ashley Peterson	CR	2	

All Spring 2020 classes were graded Credit/No Credit.

Order of the Coif



September 14, 2020

The Honorable Elizabeth W. Hanes
United States District Court
Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Letter of Recommendation for Jon Roellke

Dear Judge Hanes:

Jon Roellke is easily among the top ten students I've had in four years of teaching. He will be an ideal clerk and has my highest recommendation.

Jon took three of my classes—Con Law, Con Law II, and Civil Rights Litigation—and earned well above what was needed for an A in each one. And he did exceptionally well in his other courses, too, finishing up in the top 10 percent of his graduating class. He's been active and successful with extracurriculars, including leadership on the law review and winning the 1L moot court competition. Plus, he'd be a great person to have as a colleague in chambers.

I first got to know Jon as a 1L in my introductory constitutional law course in spring 2018. Jon was not a "gunner" at all—he probably spoke up only once or twice in the entire first month of class—but he was always visibly engaged, and his legal aptitude and work ethic became increasingly clear as the semester progressed. He did well on the first midterm (ten points above the class average), but after that his classroom and exam performance leapt to the very top of the group. In class, Jon could answer the hardest questions, including ones that went well beyond the scope of the reading. He also struck me, both in and out of class, as somebody with an unusual degree of maturity and intellectual humility. And he was the only person in the whole class to get every answer right on the next two midterms (again, well above the class average of 77.6%).

The final exam that year was very challenging. Among a very strong group of students (significantly over-represented on law review that year, I might add), the class average was 72.9%. But Jon completely knocked it out of the park, scoring just shy of 90%. (My aim when designing final exams is for the top score to be around 85%). He ended up tied for second among 42 students, easily earning him an A.

Jud Campbell
Associate Professor of Law
University of Richmond School of Law
203 Westhampton Way
Richmond, VA 23173

September 14, 2020
Page 2

I was delighted when Jon signed up for my Civil Rights Litigation course the following semester. The course is unusually challenging, and *especially* for a 2L like Jon who hadn't taken any of the underlying substantive courses like Criminal Procedure or Constitutional Law II. Unlike the first-year courses that Jon was used to, Civil Rights Litigation throws many different sources of law at the students all at once, and they have to stay carefully attuned to exactly what question they are asking and what source of law that question turns on. In the context of a *Monell* suit for an Eighth Amendment violation, for example, the claimant's case may turn on demonstrating deliberate indifference of a city policymaker (the *Monell* issue) to the guard's deliberate indifference of the inmate's health (the Eighth Amendment issue). Throughout the course, students must grapple with choice-of-law analysis—seeing how different types of law relate to each other, and how to resolve potential conflicts. Needless to say, this is a challenging and non-intuitive area of law—and one that is highly relevant to judicial clerking—and students need to be smart and disciplined to do well.

Jon's performance in the course was spectacular. His contributions to class discuss were consistently excellent, and he was effectively tied for the highest quiz grade (based on unannounced quizzes given throughout the semester). On the final, though, Jon really set himself apart. I tried to design the final so that the top grade would be around an 85%. Jon was one of only four students to score between 87% and 90%—once again earning him an A. (By the way, after this exceptional group of four, the next highest grade was 76%, and the class average was 69.5%.) Jon was also the only student in the whole class to pick up on the trickiest issue that I embedded in the issue-spotting essay (a complex preclusion issue). I was especially impressed with his performance given that nearly the entire course involved criminal procedure and individual rights cases that Jon, unlike most other students in the class, hadn't yet studied. Not surprisingly, he was *by far* the best-performing 2L in the class—16 percentage points ahead of the next-closest student.

And I was delighted to have Jon back in class the following semester (Spring 2019) for Constitutional Law II: Individual Rights, which focuses on the First Amendment and Fourteenth Amendment, with brief coverage of gun rights and takings. Once again, Jon's performance was extraordinary. His classroom contributions really set the tone for the whole class—modelling how to think through and discuss legal doctrine with an open mind and a collegial demeanor. And in terms of grades, he finished second overall in a very talented class of 43 students, easily earning him an A.

Finally, Jon would also be a great person to have around chambers. He's hard working but has an easy-going personality, and he's clearly well-liked by his classmates.

In sum, Jon has a rare combination of qualities that will make him an outstanding law clerk, and he has my highest recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Campbell". The signature is fluid and cursive, with the first name "David" written in a larger, more prominent script than the last name "Campbell".

Associate Professor of Law



September 14, 2020

The Honorable Elizabeth W. Hanes
United States District Court
Eastern District of Virginia
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

RE: Judicial Clerkship Applicant Jon Roellke

Dear Judge Hanes:

I hope this finds you well. I am writing to give a very strong recommendation of Jon Roellke for a judicial clerkship in your chambers. Jon was a student in my evidence class and I have watched him excel in various moot court competitions since then. He is about to clerk for the Chesterfield Circuit Court, and I have no doubt that he would make a fantastic clerk in your chambers.

Here's what I can tell you about Jon. In class, he sat in the back but made a very strong impression on me from the start that he was smart, engaged, and always prepared for class. He performed at the top of his class under Socratic questioning, and I knew when Jon's hand went up that he was either going to ask a really good question or was going to make a really astute comment. He wasn't inclined to be the center of attention, but there was no doubt that Jon was engaged and prepared every day. He also was one of the first students in the classroom most days (class began at 8:40, and he was often there when I arrived at 8:30) and so I had an opportunity to observe him interact informally with his peers. They adore him. Jon is kind, funny, conversational, and obviously well liked and well respected.

All that is what I can tell you from my classroom experience with Jon. What I can tell you from his performance on the exam is just wow—this is an exceptionally smart student. Jon scored a 189 on my 200-point exam. He was barely edged out for the top score in the class but after that, no student even came close to Jon's score. In fact, I need to check but it is possible that Jon (and the other student) set a record for the high score on my exam, and I've been teaching evidence for 18 years now.

I note that Jon graduated with a GPA of 3.8, placing him at the top of his class, and that he also served on the executive board of the *University of Richmond Law Review*, was a semi-finalist in both the 2018 Trial Advocacy Board Competition and 2019 Hassell Moot Court Competition, and was the *winner* of the 2018 Carrico Moot Court Competition. Jon is someone who loves the courtroom, clearly, and so I am not at all surprised to see him pursuing a clerkship. When I asked him why he wanted to clerk, he told me that he wants the immense learning opportunity

Faculty
203 Richmond Way
University of Richmond, VA 23173

www.law.richmond.edu

September 14, 2020
Page 2 of 2

that a clerkship would provide; he sees it as an unparalleled opportunity to see how law gets made and how litigants try real cases. Jon thirsts for an understanding of how the law works on the ground, and has talked to me about that understanding being both professionally and personally gratifying. All that tells me that Jon wants to continue his clerkship experience for all the right reasons.

In sum, Jon Roellke is a fantastic candidate, and I hope that you will give his application the most serious consideration. He will make a superb clerk.

My best wishes,

A handwritten signature in black ink that reads "Corinna Barrett Lain". The signature is fluid and cursive, with the first name "Corinna" being more prominent than the last name "Lain".

Corinna Barrett Lain
S.D. Roberts & Sandra Moore
Professor of Law

WRITING SAMPLE

JON R. ROELLKE

514 S. Sheppard St.

Richmond, VA 23221

jon.roellke@richmond.edu

202.906.9720

As a part of my Writing for Clerks class, I submitted a draft opinion on a motion in limine as an assignment. The motion in limine was to suppress audio recordings obtained by a government cooperating witness.

[Jon Roellke]

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE

United States of America,

v.

Thomas Haverford,

Defendant.

Civil Action No. 19-cr-12345

Honorable April Ludgate

Memorandum Opinion

Before the Court is the defendant's motion to suppress evidence in his trial for bank fraud and conspiracy to commit bank fraud under 18 U.S.C. §§ 1344, 1349. The evidence Haverford seeks to suppress is audio recordings obtained by the Government through a cooperating witness. Haverford moves to suppress admission of these audio recordings on constitutional, statutory, and evidentiary grounds. Alternatively, he moves to allow the introduction of the entirety of the audio recordings. Because the Government did not obtain the recordings in violation of the Fourth Amendment or any federal law, the Court denies his motion on those grounds. Furthermore, because Haverford has not shown that the recordings are unfairly prejudicial, or that the Government will be unable to properly authenticate them, the Court rejects his argument that the introduction of the recordings would violate the Federal Rules of Evidence. Lastly, because Haverford has not carried his burden in establishing the relevance of the recordings that he wishes to be admitted, the Court denies his alternative Rule 106 motion. Haverford's motion is denied in its entirety.

[Jon Roellke]

I. Background and Procedural Posture

The Government has charged Mr. Haverford with bank fraud arising out of an alleged scheme to defraud a financial institution by fraudulently obtaining mortgage loans using “straw buyers.” R.1 at 1–2.

This motion in limine concerns a series of audio recordings of telephone conversations between Haverford and a former co-defendant, now a cooperating Government witness. R.20 at 5. The cooperating witness recorded approximately 45 telephone conversations between himself and Haverford, consisting of approximately 11 total hours of conversation. R.30 at 3. The cooperating witness made all the audio recordings at the behest of the FBI. *Id.*

The Government asserts that the audio recordings contain probative evidence of Haverford’s guilt including:

(1) Haverford’s expectation of indictment and conviction; (2) his destruction of computer files pertaining to the loans at issue in this case; (3) his receipt of a grand jury subpoena and shredding of documents in response; (4) his considering creating evidence (bogus “seller’s concessions”) to exculpate himself; and (5) his admission that the borrowers did not bring down payments to closing as he represented to the lender. *Id.*

Haverford asserts that the conversations were merely friendly banter and “gallows humor.” R.20 at 5, 7. He insists that the conversations were traps in which his friend tricked him into making comments that appear to incriminate himself. *Id.* at 5.

Haverford makes two arguments in support of suppression of the recordings: first, that the Government illegally obtained them, and second, because there are evidentiary flaws with the recordings. In the alternative, Haverford argues that if the tapes are admissible, the jury is required to hear all 11 hours of recorded audio. Because Haverford has not shown sufficient reason to exclude any of the recordings, the Court denies his motion.

[Jon Roellke]

II. Standard of Review

Motions in limine regarding suppression of evidence are left to the discretion of the trial court. *United States v. Seago*, 930 F.2d 482, 494 (6th Cir. 1991). Relevant evidence is admissible unless some other source of law provides otherwise. Fed. R. Evid. 402. Haverford concedes that the challenged evidence is relevant; therefore, he bears the burden of showing that the evidence is inadmissible. *Cf. Luce v. United States*, 469 U.S. 38, 41 n.4 (1984) (federal district courts have authority to make in limine rulings pursuant to their authority to manage trials).

III. Analysis

A. Legality of the Interception

Haverford first argues that the Court should suppress the audio recordings because they were obtained in violation of the Fourth Amendment and federal statutory law. Because the Supreme Court has preempted Haverford's constitutional claim, and because the audio recordings fall within an exception to the statute that Haverford points to, the Court denies his motion.

1. Fourth Amendment Claim

Haverford argues that the Court should not admit the tape recordings as evidence because they were obtained in violation of the Fourth Amendment. Because the third-party doctrine preempts Haverford's claim to a reasonable expectation of privacy in his communications with the Government's cooperating witness, the Court rejects Haverford's constitutional argument.

The Fourth Amendment's protections against unreasonable searches and seizures are only implicated if the Government invades an individual's "reasonable expectations of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). The third-party doctrine establishes that "the Fourth Amendment does not prohibit the obtaining of information revealed to

[Jon Roellke]

a third party and conveyed by [the third party] to Government authorities.” *United States v. Miller*, 425 U.S. 435, 433 (1976). The Court has repeatedly reasoned that there is no expectation of privacy when a defendant voluntarily “risks” disclosing information to others. *See Carpenter v. United States*, 138 S. Ct. 2206, 2216 (2018) (quoting *Smith v. Maryland*, 442 U.S. 735, 745 (1979)).

In *United States v. White*, 401 U.S. 745 (1971), the Supreme Court held that the Fourth Amendment did not prohibit law enforcement from obtaining a defendant’s statements through electronic monitoring. In *White*, the Government obtained incriminating statements from a witness wearing a wire. *Id.* at 746–47. In rejecting the defendant’s claim that the *Katz* decision made the statements inadmissible, the Court wrote that when a defendant speaks to others about his crimes, “the risk is his.” *Id.* at 751. The Court concluded that there is no reasonable expectation of privacy when a defendant unknowingly confides in an undercover officer. *Id.*

Relatedly, although not cited by either party in this case, the Supreme Court’s decision in *Smith v. Maryland*, 442 U.S. 735 (1979), maintains that there is no expectation of privacy when a defendant voluntarily discloses information to a third-party who then discloses that information to the Government. In *Smith*, the Supreme Court used the third-party doctrine to uphold the Government’s use of a pen register on the defendant’s home phone. *Id.* at 737.

This third-party doctrine fatally undermines Haverford’s Fourth Amendment argument. While Haverford may have believed that he was speaking to a confidant, like the defendants in *White* and *Smith*, he assumed the risk that the person to whom he disclosed information was untrustworthy.

Haverford argues that the Supreme Court’s decisions in *Katz* and *City of Ontario v. Quon*, 560 U.S. 746 (2010), hold that there is a reasonable expectation of privacy in phone conversations. R. 20 at 6. However, the *Katz* decision did not involve the use of a Government informant, 389

[Jon Roellke]

U.S. at 348–52, and the *Quon* Court did not reach the issue of reasonable expectation of privacy in cell-phone conversations. 560 U.S. at 755–58.

Because Mr. Haverford voluntarily disclosed the information contained in the recordings to an informant, the third-party doctrine makes clear that there is no reasonable expectation of privacy to the contents of the recordings. The Court denies Haverford’s Fourth Amendment argument.

B. Statutory Law

Haverford also argues that a federal statute bars introducing the audio recordings at trial; in particular, he points to 18 U.S.C. § 2511(1)(b), which prohibits certain intentional uses of devices to intercept communications. R.20 at 6. Because the statute includes an express exception for parties to the communication, the Court rejects Haverford’s statutory claim.

Haverford asserts that § 2511(1)(b) categorically prohibits intercepting private telephone conversations. R.20 at 6. However, § 2511 includes various exceptions to this blanket prohibition. R.30 at 4. Among these exceptions is that parties to the communication may intercept those communications. 18 U.S.C. §§ 2511(c)–(d).¹ Indeed, courts have acknowledged that the statutory exceptions include Government informants who intercept their own communications. *E.g.*, *United States v. Salisbury*, 662 F.2d 738, 739 (11th Cir. 1981) (holding that § 2511 did not prohibit a cooperating witness from recording conversations with a defendant using a hidden microphone). Therefore, because the cooperating witness was a party to the communications that were intercepted, § 2511 does not bar the use of the communications at trial.

¹ Subsections 2511(c) and 2511(d) only differ in whether the disclosing party acts under “color of law.” Whether the cooperating witness acted under color of law or not, both subsections contain exceptions that allow parties to the communication to unilaterally intercept those communications. Because neither party has raised the issue of whether the cooperating witness acted under color of law, and because the Court need not find, the Court expresses no opinion on that issue.

[Jon Roellke]

C. Evidentiary Claims

Haverford further argues that the statements may not be introduced as evidence on two evidentiary grounds: first, that the statements are substantially more prejudicial than probative, and second, that the Government cannot authenticate the evidence. R.20 at 6–10. Because the Government’s evidence presents no risk of unfair prejudice, and because Haverford has not shown that the Government will be unable to authenticate the evidence, the Court denies Haverford’s motion.

1. Rule 403—More Prejudicial than Probative

Under Federal Rule of Evidence 403, a court may deem relevant evidence inadmissible if its probative value is “substantially outweighed” by a danger of unfair prejudice. Haverford contends that the probative value of the tape recordings is substantially outweighed by the risk of unfair prejudice because there is a risk that the jury will misinterpret them. R.20 at 6–7.

In analyzing a Rule 403 claim, the Sixth Circuit has held that only evidence that is unfairly prejudicial will be excluded under Rule 403; it is not enough for the evidence to simply be unfavorable. *United States v. Lang*, 717 F. App’x 523, 539 (6th Cir. 2017). Evidence is unfairly prejudicial if it has an “undue tendency to suggest a decision on an improper basis.” Fed. R. Evid. 403 n.; *McDole v. City of Saginaw*, 471 F. App’x 464, 472 (6th Cir. 2012).

To show that the recordings are unfairly prejudicial, Haverford relies on *United States v. Wesley*, 417 F.3d 612 (6th Cir. 2005). In *Wesley*, the Sixth Circuit held that recordings that referenced the accused’s past criminal convictions were inadmissible because the risk that the jury would convict the defendant based on his past acts substantially outweighed the limited benefits of the evidence. *Id.* at 621; *cf. United States v. Corsmeier*, 617 F.3d 417 (6th Cir. 2010) (holding

[Jon Roellke]

that evidence of the defendant's past drug usage had limited probative value and was unfairly prejudicial in her trial for bank, wire, and mail fraud).

The evidence at issue here is no doubt prejudicial to Haverford. That said, the question is not simply whether the evidence is prejudicial, but whether it is “unfairly” prejudicial. *United States v. Schrock*, 855 F.2d 327, 335 (6th Cir. 1988). Unlike the defendant in *Wesley*, the Government's evidence does not implicate Haverford's past criminal convictions or suggest that the jury would attempt to convict on an improper basis. Instead, Haverford's claimed prejudice derives from the fear that the jury will believe the content of the recordings. Haverford is free to attack the weight of the evidence in his case at trial, but has not shown that this evidence will be unfairly prejudicial.

2. Rule 901—Authentication

Haverford also argues that the recordings cannot be authenticated under Federal Rule of Evidence 901 because the quality of the tapes makes them incomprehensible and because the Government cannot prove chain of custody. R.30 at 7–8. Because the tapes are likely intelligible enough to be comprehensible, and because the Government can provide sufficient testimony to authenticate the tapes, the Court denies Haverford's motion.

i. Quality of the Recordings

Under Rule 901, the proponent of a piece of evidence must be able to prove that the evidence is what they say it is. Fed. R. Evid. 901(a). Haverford is correct that unintelligible audio recordings may not be admitted. *United States v. Robinson*, 707 F.2d 872, 876 (6th Cir. 1983). While the recordings must be intelligible, they need not be perfectly clear. In *United States v. Adams*, 722 F.3d 788 (6th Cir. 2013), the court held that partial garbling of recordings would not

[Jon Roellke]

be enough to make them inadmissible unless the quality was such as to “render the recording as a whole untrustworthy.” *Id.* at 823.

Here, the Government has committed to providing transcripts and witness testimony to clarify parts of the recording that may be unclear. R.30 at 9. Furthermore, Haverford himself has quoted from the transcripts of these recordings. R.20 at 5 As such, the recordings are not, as a whole, untrustworthy.

ii. Chain of Custody

Haverford also contests the chain of custody of the recordings. One way that Rule 901 allows for a proponent to prove both the authenticity of evidence and chain of custody is through witness testimony. Fed. R. Evid. 901(b)(1). The Government says that it will call the cooperating witness who made the recordings, as well as the FBI agent who supervised the recordings. R.30 at 8.

The Sixth Circuit has held that testimonial evidence is sufficient to establish the authenticity of evidence. *See, e.g., United States v. Sivils*, 960 F.2d 587, 596 (6th Cir. 1992) (video and audio tapes made by undercover witness were properly authenticated by chain of custody and testimony that equipment was periodically checked to assure it was operating properly). Because the Government will call witnesses with knowledge of the recordings and the chain of custody, they will be able to authenticate the evidence and prove the chain of custody.

Haverford suggests that the Government must prove chain of custody to admit the evidence. R.20 at 9. Most courts hold that chain of custody goes to the weight of the evidence, not the admissibility of the evidence. *E.g., United States v. Allen*, 619 F.3d 518, 525 (6th Cir. 2010). As such, even if the Government could not prove the chain of custody of the tapes, Haverford’s

[Jon Roellke]

motion would still fail because chain of custody goes to the weight of the evidence, not admissibility.

Because the recordings are likely intelligible, and because the Government can authenticate the evidence through witness testimony and chain of custody, the Court denies Haverford's motion to suppress for lack of authentication.

3. Rule 106—Rule of Completeness

Lastly, Haverford asserts that the rule of completeness found in Federal Rule of Evidence 106 demands that the entirety of the recorded conversations be presented to the jury. R.20 at 10. Haverford asserts that the Government's proposed excerpts are taken out of context and that the entirety of the recorded audio must be played at trial. *Id.* Because the rule of completeness does not authorize the admission of inadmissible material, and because Haverford has not pointed to specific portions of the tapes that must be admitted, the Court denies Haverford's motion.

The rule of completeness enables a party to "correct a misleading impression created by the introduction of part of a writing or conversation by introducing additional parts of it necessary to put the admitted parts in proper context." *United States v. Holden*, 557 F.3d 698, 705 (6th Cir. 2009). Rule 106 only requires the admission of a complete record if "fairness" demands a more complete record. *See United States v. Costner*, 684 F.2d 370, 373 (6th Cir. 1982). Evidence introduced pursuant to Rule 106 must be relevant and not otherwise inadmissible. *United States v. Cosgrove*, 637 F.3d 646, 662 (6th Cir. 2011). Significantly, the proponent of the evidence has the burden of proving the admissibility of the new evidence. *United States v. Price*, 516 F.3d 597, 604 (7th Cir. 2008).

[Jon Roellke]

It is difficult to believe that all 11 hours of recorded audio are both relevant and otherwise admissible, and Haverford has not met his burden of showing that fairness demands that all 11 hours of recorded audio are required.

IV. Conclusion

Because Haverford has not carried his burden on any of his claims, the Court denies his motion.

ENTER: This ____ day of March, 2020.

United States District Judge

Applicant Details

First Name **Caroline**
 Last Name **Rogers**
 Citizenship Status **U. S. Citizen**
 Email Address cjrogers5@wisc.edu

Address

Address
Street 344 W. Dayton St., Apt. 705 City Madison State/Territory Wisconsin Zip 53703 Country United States

Contact Phone Number **8656968642**

Applicant Education

BA/BS From **University of Tennessee-Knoxville**
 Date of BA/BS **May 2019**
 JD/LLB From **University of Wisconsin Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=35002&yr=2009
 Date of JD/LLB **May 7, 2022**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **Wisconsin Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **University of Wisconsin Moot Court**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Jeris, Rachel
rachel.jeris@wisc.edu
Vaughan, Brian
brian.vaughan@wisc.edu
Qurashi-Landes, Asifa
asifa.quraishilandes@wisc.edu

References

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(608) 262-8563
Asifa.quraishilandes@wisc.edu

Brian Vaughan
(608) 263-7400
Brian.vaughan@wisc.edu

Rachel Jeris
(608) 263-7400
Rachel.jeris@wisc.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Caroline Rogers

344 W. Dayton St. Apt. 705 – Madison, WI 53703 – (865) 696-8642 – cjrogers5@wisc.edu

June 6, 2021

The Honorable Elizabeth W. Hanes
Albert V. Bryan US Courthouse
401 Courthouse Square
Alexandria, VA 22314

Dear Judge Hanes:

I am a rising third year student at the University of Wisconsin Law School writing to apply for a clerkship in your chambers beginning in the fall of 2022. I am particularly interested in clerking for you, because this position would allow me to move closer to my family in the Southeast.

I serve as the Senior Online Editor for the Wisconsin Law Review as well as the Moot Court Competitions Chair. I have developed strong legal research and writing skills through writing-intensive classes and work experience. For example, I was a semi-finalist in the Wisconsin Law School 2020 Best Brief Competition. Additionally, as a law clerk for the University of Wisconsin's Office of Legal Affairs, I learned how to navigate statutory frameworks and administrative codes from any state while working on a 50-State Survey on telemedicine laws.

My resume, unofficial transcript, and writing sample are submitted with this application. Arriving separately are letters of recommendation from the following people:

Asifa Quraishi-Landes
608-263-7604
Asifa.quraishilandes@wisc.edu

Brian Vaughan
608-263-7400
Brian.vaughan@wisc.edu

Rachel Jeris
608-263-7400
Rachel.jeris@wisc.edu

I hope to have the opportunity to interview with you for a clerkship position for the fall of 2022. Thank you for your time and consideration. I look forward to hearing from you soon.

Sincerely,



Caroline Rogers

Caroline Rogers

344 W. Dayton St. Apt. 705 – Madison, WI 53703 – (865) 696-8642 – cjrogers5@wisc.edu

EDUCATION

University of Wisconsin Law School **Madison, WI**

Juris Doctor Candidate *May 2022*

- GPA:** 3.57 (approximately top 10%)
- Activities:** Wisconsin Law Review, Senior Online Editor
Moot Court, Competitor
- Community:** Legal Assistance for Disaster Relief, Tallahassee, FL
Unemployment Appeals Clinic, Madison, WI
ABA TIPS Law in Public Service Committee, Law Student Liaison
- Awards:** 2020 Best Brief Competition, Semi-finalist

University of Tennessee **Knoxville, TN**

Bachelor of Arts in Language and World Business, French and International Business Concentration *May 2019*

- Honors:** Graduated *summa cum laude*
Chancellor's Honors College
- Activities:** Tennessee Speech and Debate Society, Vice President
Tennessee Intercollegiate State Legislature, Treasurer
- Thesis:** *Pizza and Poutine: Examining Long-Term Impacts of the U.S.-Canada Dairy Dispute*

EXPERIENCE

Dorsey and Whitney, LLP **Minneapolis, MN**

Summer Associate *May 2021-present*

- Draft legal memoranda for the Labor & Employment, Employee Benefits, and Trial groups.
- Interpret statutes and pending legislation for a 50-State Survey on vaccination laws.
- Attend litigation meetings to discuss case strategy and developing areas of law.

University of Wisconsin Office of Legal Affairs **Madison, WI**

Law Clerk *May 2020-May 2021*

- Researched legal issues in higher education, employment, health, and intellectual property law.
- Managed applications and renewals for over 200 federal and state trademarks.
- Corresponded with trademark-holding clients in departments across campus on a weekly basis.

University of Tennessee Institute of Agriculture **Knoxville, TN**

Research Assistant *May 2017-Aug. 2019*

- Organized and input confidential information to databases on a daily basis.
- Surveyed Tennessee restaurant owners and farmers through telephonic interviews.

Clayton Homes, Inc. **Maryville, TN**

Retail Compliance Intern *May 2018-Aug. 2018*

- Developed a new online database to analyze data on Dodd-Frank Act violations in SharePoint.
- Interviewed teams to learn about the company's record and communication process regarding violations.

Jupiter Entertainment **Knoxville, TN**

Research Assistant, Receptionist *Jun. 2013-Aug. 2017*

- Proposed stories and researched cases for over 100 episodes of TV One's *Fatal Attraction*.
- Managed the front desk and phone system for an office of over 100 employees.

ADDITIONAL INFORMATION

Languages: Intermediate French

Interests: Rock climbing, hiking, and cooking



Course History Report for Caroline J Rogers

This document lists the courses, credits, and reported grades for the above-named student of the University of Wisconsin Law School during his/her current matriculation. This letter is not an official transcript and does not contain information concerning previous course work at the University of Wisconsin-Madison.

Fall 2019

Course #	Title	Instructor	Credits	Grade
714-004	Civil Procedure I	Mcdermott, Megan	4	B+
723-009	Legal Research and Writing	Weigold, Ursula	3	A-
726-002	Intro-Substan Criminal Law	Glinberg, Lanny	4	A
711-004	Contracts I	Yackee, Jason	4	B

Semester: Credits: 15 GPA Credits: 15 GPA Points: 52.3 GPA: 3.49

Overall: Credits: 15 GPA Credits: 15 GPA Points: 52.3 GPA: 3.49

Spring 2020

Course #	Title	Instructor	Credits	Grade
715-003	Torts I	Mcdermott, Megan	4	SD
723-003	Legal Research and Writing	Wu, Desmond	3	SD
724-001	Property	Klug, Heinz	4	SD
725-002	Intro to Criminal Procedure	Findley, Keith	3	SD

Semester: Credits: 14 GPA Credits: 0 GPA Points: 0 GPA: 0.00

Overall: Credits: 29 GPA Credits: 15 GPA Points: 52.3 GPA: 3.49

Summer 2020

Course #	Title	Instructor	Credits	Grade
940-001-AMM	Evidence	Peterson, Kim	3	A-

Semester: Credits: 3 GPA Credits: 3 GPA Points: 11.1 GPA: 3.70

Overall: Credits: 32 GPA Credits: 18 GPA Points: 63.4 GPA: 3.52

Fall 2020

Course #	Title	Instructor	Credits	Grade
850-001	Professnl Responsibilities	Varsava, Nina	3	A+
899-001	Law Review	Findley, Keith	2	S
854-012	Law Externship	Mcbride, Erin	3	S
785-001	Islamic Law & Jurisprudence	Quraishi-Landes, Asifa	2	A
731-001	Constitutional Law I	Schwartz, David	3	B+

Semester: Credits: 13 GPA Credits: 8 GPA Points: 30.8 GPA: 3.85

Overall: Credits: 45 GPA Credits: 26 GPA Points: 94.2 GPA: 3.62

Spring 2021

Course #	Title	Instructor	Credits	Grade
740-001	Constitutional Law II	Schwartz, David	3	B
771-004	Trusts & Estates I	Maier, Joseph	2	A-
815-001	Appellate Advocacy II	Tai, Steph; Stevenson, Adam	3	S
854-014	Law Externship	Mcbride, Erin	3	S
899-001	Law Review	Findley, Keith	2	S

Semester: Credits: 13 GPA Credits: 5 GPA Points: 16.4 GPA: 3.28

SUMMARY: Credits: 58 GPA Credits: 31 GPA Points: 110.6 GPA: 3.57

Future Schedule Fall 2021

Course #	Title	Instructor	Credits	Grade
744-001	Administrative Law	Seifter, Miriam	3	
822-001	Family Law: Marriage & Divorce	Brito, Tonya	3	



940-009

LGBTQ+ Law

-

3

* The Law School adopted a comprehensive pass-fail policy for the **Spring 2020 semester** due to the COVID-19 disruption. Under the policy, most courses which would have had regular letter grades but for the disruption used the following grades instead: Satisfactory-Disruption ("SD") or Unsatisfactory-Disruption ("UD"). Note: Trusts & Estates I from the Spring 2020 semester was excluded from the policy, because the course ended prior to COVID-19 disrupting campus operations.

X -- denotes no credit, re-taken

Report Generated on 06/07/2021

Official transcripts available from the University of Wisconsin Office of the Registrar.



Office of Legal Affairs
UNIVERSITY OF WISCONSIN-MADISON

June 14, 2021

RE: Letter of Recommendation for Caroline Rogers

To Whom It May Concern:

With enthusiasm, I submit this letter of recommendation in support of Caroline Rogers' application for a judicial clerkship. I am an attorney for the University of Wisconsin-Madison Office of Legal Affairs ("OLA") and had the pleasure of working with Caroline several times over this past year while she served as a Law Clerk in OLA. After graduating from law school, I had the honor of clerking for the Honorable Karen Nelson Moore of the U.S. Court of Appeals for the Sixth Circuit. Caroline approached me about my clerkship experience, and we have had several communications about the work involved and the opportunities for building skills and forging relationships. Caroline's interest in a clerkship opportunity is deep and genuine.

As is evident from Caroline's resume, she has a long record of academic excellence, which she has supplemented with numerous co-curricular activities. On top of all of that, she worked in OLA for a year, and we are hoping she returns to us for her 3L year after her Summer Associate position at Dorsey & Whitney LLP in Minneapolis. Caroline kept up with all of her work assignments despite having life upended by a global pandemic and switching to remote learning and working environments. One aspect of Caroline's duties in OLA is to work on trademark matters for which she is supervised by my colleague, Brian Vaughan. Brian describes Caroline as one of the best law clerks he has ever hired, but the only one he has never met in person.

In addition to her trademark work, Caroline provided general higher education research support to our 13-attorney office. Caroline has performed numerous research and writing projects for me on a wide variety of topics, including: disability accommodations with a focus on tenure-clock extensions and issues related to COVID-19; Federal Rule of Civil Procedure 68(a) regarding offers of judgment; the cat's paw theory of liability in discrimination claims; the presumption against discrimination liability when the same individual makes the decision to hire and fire an employee; and tortious interference claims by former hospital residents who receive negative references. Caroline always understood the research question I presented and was able to focus her efforts rather than spin her wheels on unnecessary tangents, which was impressive for a 2L. She promptly provided clearly written answers to my research questions, with appropriate citations.

On a more personal note, Caroline is a great colleague. She is personable, but always polite and professional. She gets along well with others, which I know is important for a judge's small, close-knit staff.

Sincerely,

Rachel A. Jeris
Senior University Legal Counsel



Office of Legal Affairs
UNIVERSITY OF WISCONSIN-MADISON

June 16, 2021

Re: Caroline Rogers U.S. Courts Recommendation Letter

To Whom It May Concern:

I write to recommend Caroline Rogers for employment as a judicial law clerk in your chambers. I am an attorney with the University of Wisconsin – Madison Office of Legal Affairs. Ms. Rogers has been employed in our office since May 2020, and is currently on leave for her summer associate position with the Dorsey & Whitney law firm in Minneapolis. We look forward to Ms. Rogers' return and continuation of her work with the Office of Legal Affairs during the 2021-22 academic year. She is an excellent clerk and has experience in several substantive practice areas in our office.

During the past year, she has worked closely with me in the office's trademark practice by submitting trademark applications and renewals as well as carrying out enforcement efforts. She contributed significantly to the briefing in UW's successful defense to a motion for summary judgment filed by an opposer to a UW trademark application, which is currently pending before the Trademark Trial and Appeal Board (TTAB). She wrote the section of our brief arguing points and authorities to establish a triable issue of material fact on the issue of likelihood of confusion. Her written arguments were compelling and the TTAB ruled in our client's favor. In addition to work in the trademark practice area, she assists several of my colleagues with various research and writing assignments on a variety of legal matters related to our expansive higher education practice. This includes work in the areas of academic medical center health care, employment law, and research compliance. In each of these areas Ms. Rogers demonstrates an eagerness to learn, a trait that will serve her well in her professional career.

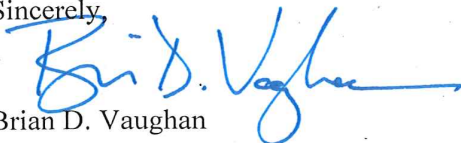
Ms. Rogers is an organized, thoughtful, and diligent worker. As a former law clerk to a U.S. District Court judge, I highly value a clerk who contributes to a fast-paced practice and can maintain order despite a high volume of work. Ms. Rogers has performed superbly in both regards. For example, due to the university's recent remote working status and limitations with our office technology, she lacked access to certain shared network drives containing important records and case materials. She quickly adapted and worked with a cloud-based application to successfully monitor and use trademark records without missing a single deadline. She moves efficiently from one assignment to the next and regularly seeks out additional assignments from other attorneys in the office across the spectrum of our practice areas.

As her transcript will confirm, Ms. Rogers is a sharp legal thinker. We discuss her assignments on a regular basis and her analysis demonstrates that she is a quick learner. She asks excellent questions in order to foster a more holistic understanding of an issue from both a legal and pragmatic perspective. In this way, she anticipates arguments from opposing parties in her written work and then effectively addresses them. Perhaps the best example of this work was her effort on the summary judgment motion in which she refuted the opposer's legal arguments as to likelihood of confusion, and then pivoted to address the most salient legal authorities and facts in support of her client's position. She thoughtfully and strategically assembles facts and legal analysis when submitting registration materials to the USPTO and in other written work as well. My coworkers offered universal praise for her work during the past year. The attorneys routinely seek her out for special projects and compliment her work.

I would also like to address the significant challenges that the pandemic created during the past year. Despite never meeting her in person, or working with her in our office, Ms. Rogers excelled in her performance as a law clerk. She persevered throughout a year full of "roadblocks" to prove herself as a smart, reliable and good-natured colleague. She is a "self-starter" who is motivated to do her job well. In short, she has been one of the best law clerks that I have had the pleasure to work with in nearly two decades of work with law students.

On a final note, I am particularly impressed with Ms. Rogers' professionalism. She is a pleasure to work with and she will bring a mature, good-natured demeanor to your court. She is committed to making her practice both fulfilling and enjoyable. Having clerked in a busy trial court chambers, I am familiar with the knowledge, skills and abilities that a judicial officer requires of his or her clerks. I am confident that you will find that Ms. Rogers embodies these qualities. I commend her for employment with your court without reservation. Please feel free to contact me at brian.vaughan@wisc.edu if further information is required. Thank you for your consideration.

Sincerely,


 Brian D. Vaughan
 Senior University Legal Counsel

June 07, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my great pleasure to write this letter recommending Caroline Rogers for a judicial clerkship in your chambers. Caroline was a student in my Introduction to Islamic law and Jurisprudence in Fall 2020 in which she earned a well-deserved A. Her contributions in class were always thoughtful and carefully worded, and she turned in an excellent writing performance on her final paper. I was especially impressed with her ability to take on some complex comparative law concepts and work them into her own analysis on in a very creative, innovative topic ("Labor Unions in Islamic and American Law: How Values and Practices Diverge") with erudition and insight. In fact, I encouraged her to think about publishing this paper. Her work was clear-headed and thorough and she has an excellent ability to grasp the conceptual ideas behind the methodological analysis of various jurists.

In short, Caroline is an excellent writer and thinker, and I believe she will serve any chambers with distinction. I am pleased and not at all surprised that Caroline has chosen to pursue a clerkship following graduation. I am confident that she is an ideal candidate for the demanding and important job of judicial law clerk. As a former federal judicial clerk myself (at both district and appellate levels), I can confidently state that she possesses the unique set of skills necessary to succeed in this demanding job. I recommend her to you enthusiastically and without reservation.

Sincerely,

Asifa Quraishi-Landes
Professor of Law

Asifa Quraishi-Landes - asifa.quraishilandes@wisc.edu

MEMORANDUM

TO: Supervising Attorney
FROM: Caroline Rogers
DATE: June 18, 2020
RE: Gay and Transgender Protection Under Title IX

QUESTIONS PRESENTED

- (1) Given the Supreme Court's recent holding that Title VII prohibits discrimination against gay and transgender people as sex discrimination in *Bostock v. Clayton County*, does Title IX protect gay and transgender people under its similarly written prohibition on sex discrimination?
- (2) Under Title IX, can schools exclude transgender students from bathrooms that match the gender with which they identify?

SHORT ANSWERS

- (1) Likely, yes. The language of Title IX and Title VII has essentially the same meaning: the law prohibits discrimination against individuals because of their sex. If a future court uses a plain meaning analysis or considers other Supreme Court precedent, it should reach the same conclusion.
- (2) Likely, no. Because Title IX protects transgender status, then excluding transgender students from their preferred bathrooms would be impermissible sex discrimination under Title IX.

ANALYSIS

(1) Title IX’s prohibition on sex discrimination protects gay and transgender students.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs. 20 U.S.C. § 1681(a) (2018). Federal circuits are split on whether Title IX’s prohibition on sex discrimination prevents discrimination against gay and transgender students. *Bostock v. Clayton Cty., Ga.*, 140 S. Ct. 1731, 1738 (2020). However, the Supreme Court’s interpretation of sex discrimination in Title VII of the Civil Rights Act of 1964 suggests that Title IX protects gay and transgender status. *Bostock*, 140 S. Ct. at 1737. The inquiry turns on the definition of “sex” in Title IX and whether it includes homosexuality and transgender status.

To interpret a statute, a court starts with the plain language of the statute, including the ordinary meaning of the words. *Bostock*, 140 S. Ct. at 1738. If the statute’s meaning is clear, the inquiry stops. *Id.* at 1749. Only if the meaning is ambiguous does the court move beyond the four corners of the statute and consider other sources such as case law, regulatory guidance, and legislative history. *Id.* at 1749.

A. Plain Language

Interpreting the plain language of Title VII, the Supreme Court concluded that “an employer violates Title VII when it intentionally fires an individual employee based in part on sex.” *Bostock*, 140 S. Ct. at 1741. If an employer discriminates against a male employee for being attracted to a man, but the employer would not have discriminated against a female employee for being attracted to a man, then the employer is discriminating based on the employee’s sex, which constitutes a Title VII violation. *Id.* at 1741. Additionally, consider an employer who

discriminates against an employee who identifies as male, because the sex he was assigned at birth was female. *Id.* at 1741. However, the employer would not have discriminated against an employee whose gender identity and sex assigned at birth are both female. *Id.* at 1741. The employer is discriminating based on sex in violation of Title VII. *Id.* at 1741.

Because the language in Title VII and Title IX is similar, a future court would likely come to the same conclusion when interpreting Title IX. First, Title VII and Title IX set similarly low bars for causation. *Compare* 42 U.S.C. § 2000e-2(a)(1) (2018) *with* 20 U.S.C. § 1681(a). Title VII uses a “but-for” causation standard for discrimination suits, meaning that employees must show that they would not have been treated differently “but for” their sex. *Id.* at 1739. Under this standard, sex must only be one of potentially many causal factors. *Id.* at 1739. Title VII prohibits discrimination “because of sex” where Title IX prohibits discrimination “on the basis of sex.” *Compare* 42 U.S.C. § 2000e-2(a)(1) *with* 20 U.S.C. § 1681(a). The two phrases “because of” and “on the basis of” are not meaningfully different, and the Court uses them interchangeably. *Bostock*, 140 S. Ct. at 1738-39.

Next, Title VII applies to individuals rather than groups. *Bostock*, 140 S. Ct. at 1740. For example, an employer violates Title VII if it treats an individual woman worse than a similarly situated man even if, on the whole, it treats women the same as men. *Bostock*, 140 S. Ct. at 1741. Title VII explicitly states that it is unlawful to “discriminate against any individual,” whereas Title IX does not include the word “individual.” *Compare* 42 U.S.C. § 2000e-2(a)(1) *with* 20 U.S.C. § 1681(a). However, Title IX says “no person shall be subjected to discrimination.” 20 U.S.C. § 1681(a). The “no person” language functions similarly to an “individual,” because it refers to a singular person rather than saying “no people” or some other reference to a group.

The plain language of Title VII and Title IX, while slightly different in word choice, essentially mean the same thing. If a future court follows the same reasoning as *Bostock* while interpreting Title IX, it should come to the same conclusion, that the plain language of Title IX unambiguously protects gay and transgender people.

B. Case Law

Even if a court finds that the language is ambiguous, Supreme Court precedent supports a broad reading of “sex” to include homosexuality and transgender status. The Court previously held that same-sex sexual harassment and motherhood discrimination violates Title VII. See *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998); *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971). Similarly, sexual harassment violates Title IX. *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60 (1992). Title VII and Title IX do not explicitly protect employees from motherhood discrimination or sexual harassment, but the Court found that these circumstances are inherently related to the employee’s sex. *Oncale*, 523 U.S. at 80-81; *Phillips*, 400 U.S. at 544; *Franklin*, 503 U.S. at 75. Because the Court broadened the definition of “sex” in both Title VII and Title IX in the past, the Court could expand Title IX in the future in the same way it did with Title VII.

C. Regulations

Alternatively, a future court could decide that Title IX does not protect gay and transgender students if it relies on agency interpretations. Courts generally defer to agency interpretations of their own statutes, but courts can override agencies if the statutes are unambiguous or the interpretations conflict with the goal of the statute. *Chevron, U.S.A., Inc. v. Nat. Res. Def.*

Council, Inc., 467 U.S. 837, 842-43 (1984). In the case of Title VII, the Supreme Court found the statute unambiguous and overrode the Department of Justice’s (DOJ) interpretation that Title VII does not protect gay and transgender people. Memorandum from the Att’y Gen., to U.S. Att’ys, Heads of Dep’t Components (Oct. 4, 2017).

The Supreme Court has yet to interpret guidance issued by the Department of Education (DOE) and DOJ issued guidance on whether Title IX protects gay and transgender students. Letter from Sandra Battle, Acting Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., T.E. Wheeler, II, Acting Assistant Att’y Gen. for Civil Rights, U.S. Dep’t of Justice (Feb. 22, 2017). During the Trump Administration, the DOE and DOJ interpreted the word “sex” to apply to sex assigned at birth, revoking Obama-era guidance which protected gay and transgender students under Title IX. *Id.*, Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., Vanita Gupta, Principal Deputy Assistant Att’y Gen. for Civil Rights, U.S. Dep’t of Justice (May 13, 2016).

Courts have deferred to agency guidance on Title IX. The Fourth Circuit cited the Obama Administration’s guidance when interpreting Title IX’s prohibition on sex discrimination. *G. G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 715 (4th Cir. 2016), *vacated and remanded*, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017). The Supreme Court then vacated the judgment and remanded the case back to the Fourth Circuit to reconsider its decision in light of the Trump Administration’s guidance. *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017). A future Court could be more deferential to Title IX guidance from the DOE and DOJ, because it showed deference in the past.

D. Legislative History

Finally, a court would likely find that Title IX's legislative history shows that the legislature did not intend Title IX to protect gay and transgender people. In *Bostock*, Justice Gorsuch, writing for the majority, declined to consider legislative history, because he found Title VII to be unambiguous on its face. *Bostock*, 140 S. Ct. at 1749. However, Justice Alito discussed legislative history at length in his dissent, saying that Congress did not consider homosexuality or transgender status when it enacted the Civil Rights Act in 1964. *Id.* at 1755-1756 (Alito, J., dissenting).

Similarly, Congress did not consider an expanded definition of "sex" when it passed Title IX of the Education Amendments in 1972. Paul C. Sweeney, *Abuse Misuse & Abrogation of the Use of Legislative History: Title IX & Peer Sexual Harassment*, 66 UMKC L. Rev. 41, 51-54 (1997). Proponents of Title IX primarily focused on the issue of discrimination against women in the education system, not another class of sex discrimination. *Id.* at 51-54. However, the plain language of Title IX is unambiguous, and the Court previously expanded the definition of sex discrimination to include sexual harassment. Therefore, evidence of legislative history will likely not be a deciding factor.

(2) Excluding transgender students from their preferred bathrooms violates Title IX.

Title IX prohibits exclusion and discrimination on the basis of sex, but a separate regulation allows schools to create separate bathroom and locker room facilities for different sexes as long as the quality of facilities for "one sex" are comparable to facilities for "the other sex." 20 U.S.C. § 1681(a) (2018); 34 C.F.R. § 106.33 (2020). The regulation does not define "sex," leaving the question of which facilities transgender students should use up for debate. 34 C.F.R. § 106.33.

Federal courts and agencies disagree on the definition of “sex” in 34 C.F.R. § 106.33. The DOE and DOJ interpreted “sex” to mean “gender identity” under the Obama Administration, but the departments under the Trump Administration interpreted “sex” to mean sex assigned at birth. Letter from Catherine E. Lhamon (May 13, 2016). Recent federal court cases were also split on whether schools can mandate which facilities transgender students can use. *Compare Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (holding that transgender students can bring sex-discrimination claims under Title IX) *with Johnston v. Univ. of Pittsburgh of Com. Sys. Of Higher Educ.*, 97 F. Supp. 3d 657, 674 (W.D. Pa. 2015) (holding that transgender status is not protected under Title IX).

Defining “sex” as either gender identity allows transgender students to use the bathroom that matches their gender identity since barring them from that bathroom would be discrimination based on their gender identity and therefore sex. *Grimm*, 822 F.3d 709. On the other hand, defining sex as sex assigned at birth will not allow transgender students to use the bathroom that matches their gender identity, but rather allows schools to force those students into the bathrooms that match their sex assigned at birth. *Grimm*, 822 F.3d 709.

While the Supreme Court declined to expand its ruling in *Bostock* to apply to bathroom cases, the Court’s interpretation of sex discrimination could guide a court on how to rule in the future. *Bostock*, 140 S. Ct. at 1753. If a future court rules that Title IX prohibits discrimination based on gender identity, like the Supreme Court did in *Bostock*, then it should determine that the definition of “sex” in the comparable facilities regulation also includes gender identity.

Though courts generally defer to agency interpretations of ambiguous language, a future court could overrule the DOE and DOJ’s interpretation if it goes against the goals of Title IX. *Grimm*, 822 F.3d at 719. Allowing transgender students to use their preferred bathroom would

follow the goal of Title IX. *Grimm*, 822 F.3d at 722. Otherwise, students whose gender identity matches the sex they were assigned at birth will be allowed to use bathrooms they are comfortable with while students whose gender identify does not match the sex they were assigned at birth will be forced to use bathrooms they are not comfortable with. *Grimm*, 822 F.3d at 716-17. This would constitute sex discrimination in violation of Title IX.

CONCLUSION

The Supreme Court’s ruling in *Bostock v. Clayton County*, which held that Title VII of the Civil Rights Act of 1964 prohibits discrimination against gay and transgender people, indicates that Title IX of the Education Amendments of 1972 also protects gay and transgender people. If a future court uses the same plain language analysis to interpret Title IX that the Supreme Court used to interpret Title VII in *Bostock*, it will likely conclude that Title IX protects gay and transgender people, because the two statutes have essentially the same meaning. Additionally, if the court looks beyond the plain meaning and considers prior Supreme Court cases, it will likely come to the same conclusion. On the other hand, if a court considers regulatory guidance or legislative history, it could come to a different conclusion. However, the plain meaning of Title IX is unambiguous, and a court will likely not consider other sources.

Because Title IX protects gay and transgender people in its prohibition on sex discrimination, a court will likely rule that schools cannot exclude transgender students from bathrooms that match the gender with which the students identify. The regulation that allows schools to separate bathrooms based on “sex” is ambiguous as to whether it applies to sex assigned at birth or gender identity. However, Title IX’s prohibition on sex discrimination includes transgender status, and the regulation will likely apply to gender identity.

Applicant Details

First Name **Daniel**
 Middle Initial **L**
 Last Name **Rosen**
 Citizenship Status **U. S. Citizen**
 Email Address drosen@sandiego.edu

Address

Address
Street
14820 El Sentido #9022
City
Rancho Santa Fe
State/Territory
California
Zip
92067
Country
United States

Contact Phone Number **8583365993**

Applicant Education

BA/BS From **San Diego State University**
 Date of BA/BS **May 2015**
 JD/LLB From **University of San Diego School of Law**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90510&yr=2012
 Date of JD/LLB **May 15, 2021**
 Class Rank **5%**
 Law Review/Journal **Yes**
 Journal(s) **San Diego Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Kammer, Anne
anne_kammer@casd.uscourts.gov
(619) 557-5960
Smith, Steven
smiths@sandiego.edu
619-260-7969

References

In addition to my recommenders, please feel free to contact the following references who can speak to my capacity as a judicial extern:

The Honorable Cynthia A. Bashant
United States District Judge
U.S. District Court for the Southern District of California
619-321-0256
Cynthia_Bashant@casd.uscourts.gov

The Honorable Jill L. Burkhardt
United States Magistrate Judge
U.S. District Court for the Southern District of California
619-557-6624
Jill_Burkhardt@casd.uscourts.gov

The Honorable Nita L. Stormes
United States Magistrate Judge
U.S. District Court for the Southern District of California

619-557-5391

Nita_L_Stormes@casd.uscourts.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

DANIEL ROSEN

PO Box 9022, Rancho Santa Fe, CA | 858-336-5993 | drosen@sandiego.edu

1 September 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes,

I am a 3L at the University of San Diego School of Law and wish to apply for a two-year clerkship in your chambers beginning in August 2021. I believe my academic record and previous externship experience demonstrate my ability to be an effective and productive clerk in your chambers.

Securing a judicial clerkship has been my goal from the outset of my law school career. I have made it my mission to gain as much experience as a judicial extern as possible so that I would have the skills necessary to make a meaningful and immediate contribution as a law clerk. To this effect, I spent two semesters as an extern for Magistrate Judges Burkhardt and Stormes working on projects including Reports & Recommendations for motions to dismiss in prisoner civil rights cases, habeas petitions, and social security appeals.

I continued to develop my skills by serving as an extern for District Judge Bashant, where I worked on a motion for judgment on the pleadings and a motion for leave to amend. I further expanded the breadth of my experience in the dispositive phase of litigation by working for District Judge Anello this summer and drafted an order on a motion to dismiss on issues of sovereign immunity that has been designated for publication. Additionally, I am currently serving as an extern for the Honorable Patrick J. Bumatay at the U.S. Court of Appeals for the Ninth Circuit. As a result, I will have experience working at multiple levels of the federal judiciary by the time I finish law school.

I am also academically qualified to serve as a law clerk in your chambers. I have a strong background in research and writing that is demonstrated by my graduate work at the University of Chicago and my position as an Articles Editor for the *San Diego Law Review's* Volume 58 Editorial Board. I currently hold a 3.83 GPA and am awaiting an updated class rank to be issued at the end of the Fall Semester. Additionally, I earned CALI Excellence for the Future Awards for Administrative Law, Federal Courts, and Legal Writing and Research II.

Serving as your law clerk would be the greatest privilege of my legal career. I am fortunate to have received excellent training from the judges and clerks I have worked with and am driven to use those skills to contribute to the important work of your chambers. I would be grateful for the opportunity to interview for this position and demonstrate my eagerness and suitability for the work. Thank you for your time and consideration.

Respectfully,



Daniel Rosen

DANIEL ROSEN

PO Box 9022, Rancho Santa Fe, CA | 858-336-5993 | drosen@sandiego.edu

Education

Juris Doctor, University of San Diego School of Law

Expected May 2021

GPA: 3.83 (Summer 2020)
 Class Rank: Top 11.02% (28/254) (as of Spring 2020)
 Honors: *San Diego Law Review*, Articles Editor, Vol. 58 Board
 CALI Award: Administrative Law; Federal Courts; Legal Writing and Research II
 Finalist, Continuing Education of the Bar Award for Excellence in Legal Writing
 Faculty Honor Scholarship

Master of Arts in International Relations, University of Chicago

June 2017

GPA: 3.85
 Honors: Degree *With Honors*, Master's Thesis Honors, Merit scholarship
 Specializations: International Relations Theory, Security, and History; International Political Economy and Development
 Thesis: "Explaining Divergence Among Internal Security Services in the British Post-Colonial World" addressed the processes through which institutionally similar British Dominions developed internal security services that diverged in terms of respect for individual rights

Bachelor of Arts in History, San Diego State University

May 2015

GPA: 3.82 (graduated in three years)
 Honors: *Summa Cum Laude*, Distinction in History, Elected to Phi Beta Kappa, Dean's List (All Qualifying Semesters)

Experience

The Honorable Patrick J. Bumatay, U.S. Court of Appeals for the Ninth Circuit ***Judicial Extern***

Fall 2020

- Conducting research and writing tasks on matters pertaining to en banc cases and performing administrative and editing tasks in support of Chambers' work product

The Honorable Michael M. Anello, U.S. District Court, So. District of California ***Judicial Extern***

Summer 2020

- Drafted orders on a motion to dismiss for lack of subject matter jurisdiction pertaining to issues of sovereign immunity and a motion to stay
- Conducted research and writing on issues of federal subject matter and jurisdiction

The Honorable Cynthia A. Bashant, U.S. District Court, So. District of California ***Judicial Extern***

Spring 2020

- Drafted proposed order on motions for judgment on the pleadings and leave to amend
- Reviewed submissions and researched case law regarding subject matter jurisdiction under the Class Action Fairness Act

The Honorable Nita L. Stormes, U.S. District Court, So. District of California ***Judicial Extern***

Fall 2019

- Drafted Reports & Recommendations on subjects including Habeas Petitions and Social Security Appeals
- Observed Mandatory Settlement Conferences, Early Neutral Evaluations, and other pre-trial proceedings

The Honorable Jill L. Burkhardt, U.S. District Court, So. District of California ***Judicial Extern***

Summer 2019

- Conducted legal research and writing on issues of federal subject matter jurisdiction including § 1983 Civil Rights claims
- Drafted Reports & Recommendations and proposed orders and observed Early Neutral Evaluations, discovery hearings, and bench trials

Daniel Rosen
University of San Diego School of Law
Cumulative GPA: 3.83

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure		A 3.9	4	
Criminal Law		B 3.1	4	
Experiential Advocacy Prac. I		P	1	
Legal Writing & Research I		A- 3.5	2	
Torts		A- 3.8	4	
Semester GPA: 3.59				
Cumulative GPA: 3.59				

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law I		A 4.1	4	
Contracts		A- 3.6	4	
Experiential Advocacy Prac. II		H	1	
Legal Writing & Research II		A+ 4.3	2	
Property		A- 3.5	4	
Class Rank: 45/209				
Semester GPA: 3.81				
Cumulative GPA: 3.70				

Fall 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law		A+ 4.3	4	
International Civil Litigation		A 4.0	3	
Judicial Externship		P	4	
Law Review Comment Written Work		P	1	
Negotiation		H	3	
Class Rank: 28/245 TIE				
Semester GPA: 4.17				
Cumulative GPA: 3.79				

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law II		P	3	
Federal Courts		P	3	
Judicial Externship Experiential Learning		P	4	

Law Review Comment Written Work	P	1
Religion and the Constitution Written Work	P	3

Due to the COVID-19 pandemic, Spring 2020 grading was mandatory Pass/No Credit, except for grades previously posted for courses completed early in the semester. All courses taken are reflected on the transcript.
Class Rank: 28/254 TIE

Semester GPA: 0.00
Cumulative GPA: 3.79

Summer 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence		A 4.1	4	

Semester GPA: 4.10
Cumulative GPA: 3.83

(Note from applicant: Class ranks are not issued for the Summer term).

Fall 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Procedure I		IP	3	
Immigration Law		IP	3	
Judicial Externship		IP	4	
Public International Law		IP	3	

Fall Courses are listed as "Course in Progress" on an official transcript. Fall Term begins August 2020. (Note from applicant: Course registration may change).

Grading System Description

Effective Fall 2015:

Grades Computed in GPA:

A+ = 4.2-4.3
A = 3.9-4.1
A- = 3.5-3.8
B+ = 3.2-3.4
B = 2.9-3.1
B- = 2.5-2.8
C+ = 2.2-2.4
C = 1.9-2.1
C- = 1.5-1.8
D+ = 1.3-1.4
D = 1.1-1.2
LP = 1.7
F = 1.0

Grades Not Computed in GPA:

H = Honors
P = Pass
NR = No Report
IP = In Progress
W = Withdraw
AU = Audit

**United States District Court
Southern District Of California**
Edward J. Schwartz Federal Courthouse
221 West Broadway, Suite 3195
San Diego, California 92101

June 29, 2020

Re: Daniel Rosen's Clerkship Application

Dear Judge Latham,

I am writing this letter in enthusiastic support of Daniel Rosen's clerkship application. I serve as Judge Michael M. Anello's career law clerk, and in that capacity, I supervise the law school students who extern for Judge Anello. Daniel is currently externing in chambers, working approximately 35 hours per week. We are only halfway through the summer, but Daniel has already distinguished himself as one of our top externs over the years. For that reason, Judge Anello and I are happy to recommend him for a law clerk position.

We strive to provide an externship experience that closely mimics the post-graduate clerkship experience. Therefore, Daniel has been assisting Judge Anello with tasks usually performed by his law clerks, including drafting complete orders for Judge Anello's review. Despite the unusual circumstances presented by the ongoing public health crisis, Daniel has had the opportunity to observe different types of judicial proceedings and meet directly with Judge Anello and chambers staff on a regular basis.

Daniel has demonstrated great aptitude for research and his writing skills are nearly without reproach. He approaches his assignments with focus and concentration. I have not hesitated to ask Daniel to work on pending motions involving complex issues. Importantly, he is also a delight to supervise and mentor. Daniel has a sincerely enthusiastic attitude, learns quickly, and is receptive to instruction and constructive criticism. Daniel is talented, intelligent, conscientious, and highly personable.

Based on his performance as an extern, I have no doubt that Daniel will make an excellent law clerk. I also feel confident in my assessment as his former professor. Daniel took my administrative law class last Fall and received the highest grade in the course. Moreover, his service during his final year of law school on the editorial board of San Diego Law Review will further hone his skills as a writer, researcher, and team player. If you have any questions or concerns, or require more information, please do not hesitate to contact me directly.

Sincerely,

Anne M. Kammer

Career Law Clerk
Chambers of the Hon. Michael M. Anello
221 West Broadway, Suite 3195
San Diego, CA 92101



Adjunct Professor of Law
University of San Diego School of Law
5998 Alcalá Park, WH-123
San Diego, CA 92110



September 01, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige, Jr.
U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I'm writing in enthusiastic support of Daniel Rosen, who has applied to you for a judicial clerkship. As you know, it is often difficult for a professor to say much about a student with whom he or she has had limited contact. That is not a problem in this instance: Daniel has taken three classes from me— Constitutional Law I, Federal Courts, and Religion and the Constitution— and he has also done an independent research project under my supervision. So, I've gotten to know him quite well, and I can say without reservation that he has the qualities— intellectual but also the qualities of character— to make an exceptionally able law clerk.

All of the usual positive things said in recommendation letters are true of Daniel— that he is bright, conscientious, prepared, and so forth. You will have his CV, and so you can see that he has done very well in law school. But I want to say mention two more specific things that help to show what an unusual student he is.

First, on the supervised research paper. I supervise a lot of these projects, and usually students will submit to me a couple of drafts and maybe stop by to discuss the project once or twice. Which is fine; that's all that is expected. (Often the projects are for law review and the law review people do much of heavy lifting.) But Daniel wanted to do a paper on the problem of succession of rebbes in Hasidic communities, and he really wanted to get it right. So, he did a huge amount of research, and he talked with me maybe 8 or 10 times, trying out particular points and theories, and also submitted multiple drafts. Just as a writer, I would say that he is able but not the most fluent writer I've ever supervised. But in his determination to make the paper the best it could be, I don't think I've ever had a more dedicated student.

Second, I want to say something about this last semester, which was unusual with the Covid restrictions, remote teaching, and pass-credit grading. Although Daniel already ranked high in the class, he had mentioned to me that he was determined to improve his standing, and so he was disappointed that the pass-credit system precluded that possibility. When the faculty decided mid-semester to use the pass-credit system, one concern was that many students would make the (rational) decision to slack off a bit in their studies, since credit was the best they could get and was pretty much assured. And some students did this. Daniel seemed to me to do almost the opposite. Particularly in Fed Courts (a very challenging class), he seemed if possible to study even harder than before. I could tell, because he would ask me questions about matters mentioned briefly in the notes but that I had not focused on and that we had not discussed in class. Several times he evidently went and read note cases— carefully. (Carefully enough that he would ask about inconsistencies in what the same Justice had said in different— unassigned!— note cases.) This is something that students almost never do (and that I certainly never did as a student).

His dedication, in short, was remarkable. And it showed on the exam: Daniel's exam in Fed Courts was one of the best I have ever read. I think I'm allowed to say that if the class had been graded, Daniel's exam would easily have received the highest grade in a class of very good students.

As a person, I have always found Daniel to be courteous, pleasant, and respectful. He is a bit shy and soft-spoken. I think he would be very easy to work with.

In sum, I hope I've made clear that Daniel is not merely an excellent student; he is extraordinary— and in ways that would contribute, I think, to making him a valuable law clerk. I hope you will give him careful and favorable consideration.

Respectfully,
Steven D. Smith
Warren Distinguished Professor of Law
University of San Diego

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DANIEL ROSEN

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Writing Sample

The attached writing sample is an order on a motion to dismiss for lack of subject matter jurisdiction from the case of *Safeco Insurance Company of America v. Nelson*, No. 20-CV-211-MMA-DEB, 2020 WL 3445045. I worked extensively on this order under the supervision and guidance of the career law clerk, and it has been designated for publication in the Federal Supplement. I submit this order as my writing sample with the knowledge and permission of Chambers.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAFECO INSURANCE COMPANY OF
AMERICA, a New Hampshire
Corporation,

Plaintiff,

v.

LARRY NELSON, an individual,
TRACY IRENE GOLDEN, an individual,
SYLENA SANDERS, an individual, the
UNITED STATES OF AMERICA, and
Does 1 – 5,

Defendants.

Case No. 20-cv-00211-MMA (AHG)

**ORDER GRANTING THE UNITED
STATES' MOTION TO DISMISS**

[Doc. No. 12]

On January 31, 2020, Plaintiff Safeco Insurance Company of America (“Plaintiff”) filed a complaint against Larry Nelson (“Nelson”), Tracy Irene Golden, Sylena Sanders, and the United States of America. *See* Doc. No. 1. Plaintiff seeks a declaratory judgment from the Court declaring, amongst other things, that it has no duty to defend its insured, Larry Nelson, in any of the pending suits filed against him by the respective defendants. *See* Doc. No. 1. at 29–30.¹

¹ All citations refer to the pagination assigned by the CM/ECF system. All docket references refer to the docket of this action unless otherwise noted.

1 The United States moves to dismiss for lack of subject matter jurisdiction pursuant
 2 to Federal Rule of Civil Procedure 12(b)(1). *See* Doc. No. 12. Plaintiff filed an
 3 opposition to the United States’ motion, to which the United States replied. *See* Doc.
 4 Nos. 14, 17. The Court took the matter under submission on the papers and without oral
 5 argument pursuant to Civil Local Rule 7.1.d.1. *See* Doc. No. 18; Fed. R. Civ. P. 78(b).
 6 For the reasons set forth below, the Court **GRANTS** the United States’ motion.

7 BACKGROUND

8 The root of this dispute is a suit between two of the defendants in Plaintiff’s
 9 declaratory judgment action, the United States and Nelson. *See* Doc. No. 1; Doc. No. 1-2
 10 (“Ex. A”). The United States filed a civil enforcement suit against Nelson on June 11,
 11 2019 alleging numerous violations of Title VIII of the Civil Rights Act of 1968, as
 12 amended, 42 U.S.C. §§ 3601, *et seq.* (“the Fair Housing Act”). *See* Doc. No. 1 ¶ 8; Ex.
 13 A. These allegations include “that Nelson has subjected tenants of his residential rental
 14 properties to discrimination, based on sex” as well as allegations of sexual harassment
 15 towards Nelson’s female tenants. Doc. No. 1 ¶12, 12(a)–(j).

16 Plaintiff is not a party to the United States’ suit against Nelson. *See* Ex. A.
 17 Plaintiff relates to that suit only in that it issued Nelson several insurance policies
 18 covering the rental properties at which the alleged statutory violations occurred. *See*
 19 Doc. No. 1 ¶¶ 24–38; Ex. A. Plaintiff agreed to defend Nelson in the United States’ suit
 20 against him but subjected that defense “to a full and complete reservation of rights.”
 21 Doc. No. 1 ¶ 39. The United States’ suit against Nelson is ongoing. *See* S.D. Cal. Case.
 22 No. 19cv1087-CAB-WVG.

23 Meanwhile, Plaintiff initiated this action against Nelson, the United States, and
 24 other individuals who have also sued Nelson based on similar allegations to those of the
 25 United States. *See* Doc. No. 1. Plaintiff alleges that the Court has subject matter
 26 jurisdiction over the United States pursuant to 28 U.S.C. § 1332 and the Administrative
 27 Procedure Act, 5 U.S.C. § 702. *See id.* ¶¶ 1, 6. Plaintiff seeks a declaration and
 28

corresponding judgment establishing that it has no duty to defend or indemnify Nelson against any of the claims brought against him by the United States. *See id.* ¶ 57.

The United States moves to dismiss Plaintiff’s claim against it for lack of subject matter jurisdiction on three grounds. *See* Doc. No. 12. First, the United States argues that no case or controversy exists between it and Plaintiff. *See id.* at 3–5. Second, the United States asserts that it has not waived its sovereign immunity and is therefore immune from Plaintiff’s suit. *See id.* at 5–6. Finally, the United States contends that Plaintiff’s reliance on section 702 of the Administrative Procedure Act “to circumvent the jurisdictional failures in its complaint . . . is also misplaced.” *Id.* at 6.

In response, Plaintiff sets forth two arguments. *See* Doc. No. 14. First, Plaintiff asserts that a case or controversy exists between it and the United States because the United States is “a third-party claimant and potential judgment creditor under California Insurance Code section 11580(b)(2).” *Id.* at 5; *see id.* at 5–7. Second, Plaintiff contends that section 702 of the Administrative Procedure Act constitutes a waiver of sovereign immunity for actions seeking declaratory relief and the United States is properly subject to suit as a result. *See id.* at 5, 7–9.

LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) allows for dismissal of a complaint for lack of subject matter jurisdiction. “[F]ederal courts are courts of limited jurisdiction.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978), *superseded by statute on other grounds*, 28 U.S.C. § 1367, *as recognized in LaSalle Nat’l Trust, NA v. Schaffner*, 818 F. Supp. 1161, 1165 (N.D. Ill. 1993). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citing *Cal. ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979)). Subject matter jurisdiction must exist when the action is commenced. *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988) (citing *Mollan v. Torrance*, 22 U.S. (9. Wheat.) 537, 538 (1824)). Further, subject matter

jurisdiction may be raised “at any stage of the litigation.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).

A facial attack on jurisdiction asserts that the allegations in a complaint are insufficient to invoke federal jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In resolving a facial challenge to jurisdiction, a court accepts the allegations of the complaint as true and draws all reasonable inferences in favor of the plaintiff. *Doe v. Holy See*, 557 F.3d 1066, 1073 (citing *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004)).

DISCUSSION

I. Sovereign Immunity

The United States moves for dismissal on the grounds that it has not waived its sovereign immunity from suit and Plaintiff’s reliance on the Administrative Procedure Act (“APA”) to establish such a waiver is inapposite. *See* Doc. No. 12 at 5–7. Plaintiff responds by reiterating its reliance on the general waiver of sovereign immunity articulated in section 702 of the APA. Plaintiff asserts that the United States’ “coercive action against [Plaintiff’s] insured” constitutes a “final agency action” subjecting the United States to suit within the meaning of the APA. *See* Doc. No. 14 at 9.

It is an unquestioned principle that the United States is a sovereign entity that is not amenable to suit without its consent. *See, e.g., McGuire v. United States*, 550 F.3d 903, 910 (9th Cir. 2008). It is also well-established that the burden of overcoming sovereign immunity lies with the party bringing suit against a sovereign. *See Dunn & Black P.S. v. United States*, 492 F.3d 1084, 1088 (9th Cir. 2007) (citing *Cunningham v. United States*, 786 F.2d 1445, 1446 (9th Cir. 1986)). That is, absent a positive demonstration that sovereign immunity does not apply, this Court must presume that the United States is not amenable to suit. *See Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (“Where a suit has not been consented to by the United States, dismissal of the action is required.”); *see also United States v. Mitchell*, 463 U.S. 206, 212 (1983) (“It is axiomatic

1 that the United States may not be sued without its consent and that the existence of
2 consent is a prerequisite for jurisdiction.”).

3 The question, then, is whether Plaintiff has affirmatively pleaded around the
4 United States’ sovereign immunity. The Court concludes that Plaintiff has not.

5 In its opposition to the United States’ motion, Plaintiff offers two statutory grounds
6 for establishing a waiver of sovereign immunity, the Declaratory Judgment Act, 28
7 U.S.C. § 2201, and section 702 of the APA. *See* Doc. No. 14 at 7. However, the
8 Declaratory Judgment Act functions solely as a procedural mechanism. *See Aetna Life*
9 *Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 240 (1937) (“[T]he operation of the
10 Declaratory Judgment Act is procedural only.”). The Declaratory Judgment Act is
11 neither a waiver of sovereign immunity nor an independent grant of jurisdiction. *See*
12 *Brownell v. Ketcham Wire & Mfg. Co.*, 211 F.2d 121, 128 (9th Cir. 1954); *see also*
13 *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983) (per curiam) (“The Declaratory
14 Judgment Act does not provide an independent jurisdictional basis for suits in federal
15 court.”); *Walton v. Fed. Bureau of Prisons*, 533 F. Supp. 2d 107, 114 (D.D.C 2008)
16 (citing *Balistreri v. United States*, 303 F.2d 617, 618 (7th Cir. 1962)) (finding that the
17 Declaratory Judgment Act does not waive sovereign immunity). Rather, it “merely
18 provides an additional remedy in cases where jurisdiction is otherwise established.”
19 *Staacke v. U.S. Sec’y of Labor*, 841 F.2d 278, 280 (9th Cir. 1988) (citing *Luttrell v.*
20 *United States*, 644 F.2d 1274, 1275 (9th Cir. 1980)).

21 Additionally, Plaintiff alleges that section 702 of the APA establishes the United
22 States’ waiver of sovereign immunity. Section 702 states in relevant part:

23 A person suffering legal wrong because of agency action, or
24 adversely affected or aggrieved by agency action within the
25 meaning of a relevant statute, is entitled to judicial review
26 thereof. An action in a court of the United States seeking relief
27 other than money damages and stating a claim that an agency or
28 an officer or employee thereof acted or failed to act in an official
capacity or under color of legal authority shall not be dismissed

1 nor relief therein denied on the ground that it is against the United
 2 States or that the United States is an indispensable party.

3
 4 5 U.S.C. § 702.

5 The Ninth Circuit has conflicting interpretations of the scope of this provision.²
 6 For example, in one case, the Ninth Circuit interpreted section 702 as a general waiver of
 7 sovereign immunity “in actions seeking nonmonetary relief against legal wrongs for
 8 which governmental agencies are accountable.” *Presbyterian Church (U.S.A.) v. United*
 9 *States*, 870 F.2d 518, 525 (9th Cir. 1989) (footnote omitted). In so doing, the Ninth
 10 Circuit held that section 702’s application was not limited to the context of “agency
 11 action” as the APA defines the term. *Id.* (“This waiver was clearly intended to cover the
 12 full spectrum of agency conduct, regardless of whether it fell within the technical
 13 definition of ‘agency action’ contained in § 551(13).”). However, in a subsequent
 14 opinion, the Ninth Circuit recognized that “the APA’s waiver of sovereign immunity
 15 contains several limitations.” *Gallo Cattle Co. v. U.S. Dep’t of Agric.*, 159 F.3d 1194,
 16 1198 (9th Cir. 1998). Among these limitations is section 704’s requirement that agency
 17 action either be made reviewable by statute or constitute “final agency action.” *See id.*
 18 (quoting 5 U.S.C. § 704).

19 The Ninth Circuit has acknowledged the conflict between these opinions, going so
 20 far as to state that there is “no way to distinguish *The Presbyterian Church* from *Gallo*
 21 *Cattle*,” but nevertheless has declined to resolve the issue. *Gros Ventre Tribe v. United*
 22 *States*, 469 F.3d 801, 809 (9th Cir. 2006); *see also EEOC v. Peabody W. Coal Co.*, 610
 23 F.3d 1070, 1086 (9th Cir. 2010) (recognizing the tension between *Presbyterian Church*
 24 and *Gallo Cattle* and stating “[w]e similarly need not resolve this tension here.”). In any

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 26
 27 ² “The question of how [section 702] should be interpreted has generated intra-and inter-circuit splits
 28 and general confusion.” Kathryn E. Kovacs, *Scalia’s Bargain*, 77 Ohio St. L.J. 1155, 1170 (2016).
 Moreover, “[o]n the question of how the waiver of sovereign immunity in § 702 relates to the other
 provisions of the APA, the courts of appeals are all over the map.” *Id.* at 1177.

1 event, the Court applies the principles expressed in both opinions and finds Plaintiff's
2 invocation of section 702 misplaced under both standards.

3 Plaintiff interprets section 702 as waiving the United States' "sovereign immunity
4 for *any* action stating a claim against the United States and seeking relief other than
5 money damages," and cites to *Presbyterian Church* in support. *See* Doc. No. 14 at 7-8
6 (emphasis in original) (citing *Presbyterian Church*, 870 F.2d at 525–26). While the
7 Ninth Circuit has observed that "[t]his waiver was clearly intended to cover the full
8 spectrum of agency conduct, regardless of whether it fell within the technical definition
9 of 'agency action' contained in § 551(13)," *Presbyterian Church*, 870 F.2d at 525, there
10 are fundamental differences between *Presbyterian Church* and the present case that
11 preclude the extension of the section 702 waiver here.

12 *Presbyterian Church* involved alleged First and Fourth Amendment violations
13 perpetrated by the agency during the course of an investigation targeting the plaintiff
14 religious institutions. *See* 870 F.2d at 520–24. The plaintiffs' constitutional claims were
15 premised on "agency action" directed specifically against the plaintiffs, not against a
16 third party. Moreover, the constitutional nature of the plaintiffs' claims provided an
17 underlying basis for subject matter jurisdiction which is simply not present in this case.

18 Second, as already noted, the Ninth Circuit has established that section 702 applies
19 to "legal wrongs for which governmental agencies are accountable." *Id.* The D.C.
20 Circuit has provided persuasive guidance defining the term "legal wrong" within the
21 meaning of the APA. According to the D.C. Circuit "'legal wrong' means such wrong as
22 particular statutes and the courts have recognized as constituting grounds for judicial
23 review." *Kansas City Power & Light Co. v. McKay*, 225 F.2d 924, 932 (D.C. Cir. 1955).
24 In other words, "the invasion of a legally protected right" is a "legal wrong." *See Pa.*
25 *R.R. Co. v. Dillon*, 335 F.2d 292, 294 (D.C. Cir. 1964) (citing *Gonzales v. Freeman*, 334
26 F.2d 570, 576 n.6 (D.C. Cir. 1964)).

27 Here, it is far from clear that the United States has committed a legal wrong against
28 Plaintiff. Plaintiff's suit is a contract dispute between it and its insured, and the United

1 States is not a party to their agreement. *See* Doc. No. 1; Doc. No. 12. The Court is
 2 reluctant to classify a civil enforcement action brought by the United States under the
 3 auspices of the Fair Housing Act against an *insured* as a “legal wrong[] for which
 4 governmental agencies are accountable” to the *insurer*. *See Presbyterian Church*, 870
 5 F.2d at 525. Further, Plaintiff cannot rely on the Fair Housing Act to supply such a
 6 wrong or assert that it has been “adversely affected or aggrieved by agency action” as
 7 stated in section 702. *See* 5 U.S.C. § 702. By its own terms, the Fair Housing Act
 8 defines “aggrieved person” as someone who “claims to have been injured by a
 9 discriminatory housing practice,” 42 U.S.C. § 3602(i)(1), or “believes that such person
 10 will be injured by a discriminatory housing practice that is about to occur.” *Id.* §
 11 3602(i)(2). Plaintiff is neither. Nor can Plaintiff claim to be a “respondent” within the
 12 meaning of the Fair Housing Act. According to section 3602, a “respondent” is “the
 13 person or other entity accused in a complaint of an unfair housing practice,” *id.* §
 14 3602(n)(1), or “any other person or entity identified in the course of investigation as
 15 required with respect to respondents so identified under section 810(a).” *Id.* §
 16 3602(n)(2). Because Plaintiff was not sued by the United States in its enforcement action
 17 and has not established that section 3602(n)(2) applies, it cannot claim to be a
 18 “respondent.” *See* Doc. No. 1 Ex. 1; Doc. No. 12 at 4; § 3602(n). Plaintiff has provided
 19 no other theories through which it might have suffered a “legal wrong” as a result of
 20 agency action. *See* Doc. No. 14. Thus, Plaintiff cannot claim a waiver of sovereign
 21 immunity under section 702 in accordance with *Presbyterian Church*.

22 The case for dismissing the United States is even clearer under the principles
 23 articulated in *Gallo Cattle*. In *Gallo Cattle*, the Ninth Circuit held that section 704 of the
 24 APA limits section 702’s waiver of sovereign immunity. 159 F.3d at 1198. As a result,
 25 the sovereign immunity waiver would only apply in instances of “final agency action.”
 26 *See id.*; §704. The Ninth Circuit has held that civil actions filed by the United States,
 27 such as civil asset forfeiture suits, do not qualify as “final agency action.” *See City of*
 28 *Oakland v. Lynch*, 798 F.3d 1159, 1166 (9th Cir. 2015) (“The Government’s decision to

1 file the forfeiture action is not ‘final,’ because it is not an action ‘by which rights or
2 obligations have been determined, or from which legal consequences will flow.’”). This
3 principle has been applied by other district courts, including in cases where the FTC has
4 filed civil actions. *See Am. Fin. Benefits Ctr. v. FTC*, No. 17-04817, 2018 WL 3203391,
5 at *7–9, (N.D. Cal. May 29, 2018). The United States’ civil enforcement action under
6 the Fair Housing Act is analogous to these proceedings and therefore also fails to qualify
7 as “final agency action.” *See id.*; *Lynch*, 798 F.3d at 1166; Ex. A. Thus, Plaintiff’s
8 assertion of a waiver of sovereign immunity through section 702 misses the mark under
9 *Gallo Cattle* as well.

10 Lastly, conflating sovereign immunity and jurisdiction,³ Plaintiff argues that in
11 cases where a plaintiff is seeking declaratory relief but “does not raise a federal question,
12 it may stake the federal court’s jurisdiction on ‘a defense to a claim that would raise a
13 federal question and that defendant could have asserted in a coercive action.’” *See* Doc.
14 No. 14 at 8 (quoting *Bell & Beckwith v. United States*, 766 F.2d 910, 912 (6th Cir.
15 1988)). As such, Plaintiff contends that “in declaratory judgment actions, ‘federal
16 question jurisdiction exists if such jurisdiction would have existed in a coercive action by
17 the defendant.’” *Id.* (quoting *Bell & Beckwith*, 766 F.2d at 912). Plaintiff reasons that
18 since the United States has already filed suit against Nelson on the basis of a federal
19 question, this requirement is met. *See id.* at 9. The Court disagrees for two reasons.

20 First, both cases cited by Plaintiff in support of the aforementioned argument
21 pertain to interpleader actions. *See Bell & Beckwith*, 766 F.2d 910; *Morongo*, 858 F.2d
22 1376. This, however, is not an interpleader action. *See* Doc. No. 1. Thus, *Bell &*
23 *Beckwith*’s reliance on Federal Rule of Civil Procedure 22 to establish federal question
24 jurisdiction is inapplicable here. *See* 766 F.2d at 913–17. Second, the Supreme Court

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26 ³ As one administrative law scholar has clearly and concisely explained, “[t]o sue the United States, a
27 complaint must state a basis for jurisdiction, a cause of action, and a waiver of sovereign immunity. A
28 single statute may provide all three, but they are distinct requirements. Subject matter jurisdiction
implicates ‘the courts’ statutory or constitutional power to adjudicate the case.’ The APA does not
provide jurisdiction.” Kovacs, *supra*, at 1158.

1 has stated that “[f]ederal courts have regularly taken original jurisdiction over declaratory
2 judgment suits in which, if the declaratory judgment defendant brought a coercive action
3 to enforce its rights, that suit would necessarily present a federal question.” *Franchise*
4 *Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 19
5 (1983), *superseded by statute on other grounds* 28 U.S.C. § 1441(e), *as recognized in*
6 *Marda v. Klein*, 865 F.2d 782, 783 (6th Cir. 1989). The Supreme Court indicated that,
7 for example, declaratory judgment actions pertaining to patent rights met this standard.
8 *See id.* at 19 n. 19 (citing *E. Edelman & Co. v. Triple-A Specialty Co.*, 885 F.2d 852 (7th
9 Cir. 1937)). Here, the United States has filed no such action against Plaintiff. The
10 “coercive action” at issue has been filed against Nelson.

11 The Supreme Court also noted its previous dicta “that a declaratory judgment
12 plaintiff could not get original federal jurisdiction if the anticipated lawsuit by the
13 declaratory judgment defendant would *not* ‘arise under’ federal law.” *Id.* (citing *Pub.*
14 *Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 248 (1952)) (emphasis in original).
15 The fact remains that Plaintiff is not a party to the United States’ suit against Nelson and
16 the focus of this action is Plaintiff’s contractual obligation to Nelson under its policies.
17 *See* Doc. No. 1 Ex. A; Doc. No. 1. Thus, the United States’ separate suit against Nelson
18 does not cause this declaratory action to “arise[] under federal law.” *See* Doc. No. 14 at
19 8–9; *Franchise Tax Bd.*, 463 U.S. at 19, 19 n.19.

20 In sum, neither the Declaratory Judgment Act, section 702 of the APA, nor the
21 separate suit against Nelson provide the requisite waiver of the United States’ sovereign
22 immunity or otherwise establish a proper basis for jurisdiction over the United States in
23 this action.

24 **II. Case or Controversy**

25 The United States also argues that Plaintiff’s claim should be dismissed for lack of
26 subject matter jurisdiction because no case or controversy exists between the parties. *See*
27 Doc. No. 12 at 3–5.

As the Court noted above, “the operation of the Declaratory Judgment Act is procedural only.” *Aetna Life Ins. Co. of Hartford v. Haworth*, 300 U.S. 227, 240 (1937). Thus, the Ninth Circuit has established that “[a] lawsuit seeking federal declaratory relief must first present an actual case or controversy within the meaning of Article III, section 2 of the United States Constitution.” *Gov’t Emps.’ Ins. Co. v. Dizol*, 133 F.3d 1220, 1222 (9th Cir. 1998) (citing *Aetna*, 300 U.S. at 239–40). In order for a controversy to exist, the dispute in question cannot be “hypothetical or abstract.” *See Aetna*, 300 U.S. at 240. Rather, “[t]he controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests,” and “must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character.” *Id.* at 240–41 (citations omitted).

Plaintiff contends that there is a controversy between the parties over Plaintiff’s duty to defend or indemnify Nelson for the United States’ claims against him. *See* Doc. No. 12 at 4; Doc. No. 1 ¶ 49. The United States argues that the real controversy in this action is between Plaintiff and Nelson. *See* Doc. No. 12 at 4. The United States further contends that “[c]ontrary to [Plaintiff’s] assertions, none of the United States’ allegations against Mr. Nelson in the underlying complaint allege the existence of coverage obligations on behalf of [Plaintiff].” *Id.* Finally, the United States argues that Plaintiff’s “policies are contracts between [Plaintiff] and Nelson” to which the United States is not a party and that it brought its suit against Nelson “without regard to the language of any insurance contracts Nelson may have.” *Id.*

Plaintiff responds that a case or controversy does exist between it and the United States because the Government is a potential third-party claimant on Nelson’s insurance policies within the meaning of California Insurance Code section 11580(b)(2).⁴ *See* Doc.

⁴ California Insurance Code section 11580 details several provisions that must be included in insurance policies. Section 11580(b)(2) requires the following:

A provision that whenever judgment is secured against the insured or the executor or administrator of a deceased insured in an action based upon bodily injury, death, or